

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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Transcript of Record.  
(IN FIVE VOLUMES)

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EBNER GOLD MINING COMPANY (a Corporation),  
Plaintiff in Error,  
vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,  
Defendant in Error.

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VOLUME II.  
(Pages 369 to 736, Inclusive.)

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Upon Writ of Error to the United States District Court of  
the District of Alaska, Division No. 1.

FILED

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(Testimony of H. T. Tripp.)

Q. It ran across the Idaho?

A. I suppose it ran across there. It ran over an old trail and down into the creek and up on the other side and on to the Parish,—I think it went on to the Parish #1. I am sure it [333] did. I think it goes across the corner,—I wouldn't be sure about that.

Q. You mean leading up the mountain?

A. No; I mean going over on to the Parish #2.

Q. How high up Snowslide Gulch does that trail cross?

A. If you know where there is an old tramway terminal—that went past that tram terminal.

Q. You mean the big tower?

A. An old tower that was built by the Nowells, I think. We went into the creek slantingly around on the side of the creek, so as to get out there and come up on the other side of the creek.

Q. And that was to give you access?

A. No, it was so I could go and come this way from Juneau up on to these claims, without going way up around and coming down the other way.

Q. I didn't finish the question. That was to give you access to the upper ridges of this property where you were engaged in this investigation?

A. Yes, sir.

Q. And the road was not built to lead to any particular point where you had determined to do any such development work either on the Parish #1 or the Parish #2? A. No, sir, it was not.

Q. Mr. Tripp, what work did you do on the Cape

(Testimony of H. T. Tripp.)

Horn Number 1 and the Cape Horn #2, and the Eureka, except the driving of a tunnel?

A. I cut the brush and I cut the underwood from the main wagon road off down to the place where I expected to start this tunnel up toward the point in the road called Shady Bend. [334]

Q. So as to get a connection with the main road?

A. Yes, sir. I had a lot of wood cut there and piled up, rather than waste it, that I got from that place and had it hauled down to Widow McLaughlin.

Q. There was no other work done as assessment work on the Eureka and Cape Horn and the Cape Horn #2 except that work you have described?

A. No, sir, there was not.

Q. And that was intended as work on these claims?

A. Yes, sir.

Q. Now, about the Borean pit. You had a sluice-box with riffles put in there? A. Yes, sir.

Q. And there was a rocker there, too?

A. No, sir, a man had a pan—no rocker.

Q. Did you get any values out of that ground?

A. Nothing worth talking about.

Q. You can't locate on this plat, can you, exactly where the tunnel you started is, with reference to the present tunnel?

A. No, I couldn't tell by looking at that map. It would require a survey to tell that but it is practically in the same place, I should think.

Q. You know it is not exactly in the same place?

A. From what I am told, they say it is not—I don't know. I understood they chose a place a few

(Testimony of H. T. Tripp.)

feet higher up than I did.

Q. This air-compressor and mill and the water right which you repaired have been part of the main works of the Ebner mine ever since it has been a going concern?

A. Yes, ever since I have known it. [335]

Q. And it was simply repair on equipment installed? A. Yes, sir.

Q. And the tramway which you spoke of as coming from this branch road near the place marked "chute" over to the compressor was for the purpose of carrying stuff to the compressor while you were repairing; is that right? A. That is right.

Q. But it was not connected with any scheme of development work on the Parish #2?

A. No, excepting for the general benefit of everything, all concerned.

Q. I mean which would connect with any particular spot which you intended to develop on the Parish #2 or any spot that had theretofore been developed? A. No, sir.

Q. It was not made for the furtherance of any particular scheme of development of the Parish #2, was it?

A. It was not for a scheme of doing assessment work, but it was for the purpose of—

Q. Aiding the whole property?

A. Aiding and opening and developing the whole proposition—the whole property; yes, sir.

Q. But its need became apparent when you started to repair the compressor plant on the Lotta?

(Testimony of H. T. Tripp.)

A. Yes, sir, it did.

Q. And that is what it was put in there for, temporarily?

A. That is what it was put in there for—to change some machinery and put other machinery in place of the machinery that was there.

Mr. SHACKLEFORD.—That is all at this time. I may ask leave to recall the witness after reading his testimony. [336]

Redirect Examination.

(By Mr. WINN.)

Q. In putting in this air-compressor and making these provisions, etc., for your work—if your work had been continued on, you would have had to use the air-compressor in driving through the Parish lode #2 the same as driving through any of the rest of them?

A. I would have used them in starting the work with, yes, sir.

Q. If your tunnel had been continued on through, you would have used it for the general purpose of driving the whole tunnel?

Objected to as cross-examination. Objection sustained.

Q. What would you use it for?

Same objection. Objection overruled. Defendant allowed an exception.

A. I would have used that until I could put other machinery in place. I had a ten-drill compressor stored on the wharf down here in Juneau to have put in place for that purpose, as soon as I determined

(Testimony of H. T. Tripp.)

where I would put it. I had ten drills also to go with the compressor and they are now here in Juneau.

Q. That machinery was intended for the enlargement of the plant that you have been testifying was to be built down somewhere on the flats?

A. Yes, sir.

Q. Now, then, did you or did you not intend to go ahead and use this air-compressor for the mining of the property as the Ebner Mining Company had been mining it or did you put it in shape for some other plant?

A. I had no intention of mining the Ebner mine as it had been mined.

Q. Now, you said something about having purchased the Auk Chief lode—for whom did you make that purchase? [337]

A. I bought that from one Tom McCullough and a man named B. M. Behrends, I think it was.

Q. Did you buy it for your individual self or for whom did you purchase it?

Objected to as not the best evidence. Objection overruled and defendant allowed an exception.

Q. From whom did you buy it?

A. From McCullough and Behrends.

Q. And for whom?

A. I was working for the California & Nevada Copper Company and I bought them for their interest—took it in my name and paid for it with their money.

Q. Was it intended to be a part and parcel of this

(Testimony of H. T. Tripp.)

whole Ebner property when you purchased it?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness, and it don't make any difference whether it was intended to be or not,—it is not a contiguous claim.

Objection sustained. Plaintiff allowed an exception.

Q. Was that bought by you to be a separate and distinct piece of property or was it bought by you for the purpose of protecting the entire group of claims up there in opening up and developing that as a property?

Same objection.

By the COURT.—He has already explained why he bought it on direct examination, to get out of some conflict as I recall it, so he would not have any law-suits over the other property.

Q. Would that Auk Chief have been of any value to you or the people whom you represented, taking it apart from all the rest of the Ebner property?  
[338]

Mr. SHACKLEFORD.—We object as calling for a conclusion of the witness and irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. If I was prospecting and looking for a location I wouldn't go and put a notice on it, locating it for the mineral values that are in it, as far as that is concerned. I don't know how to answer your ques-



(Testimony of H. T. Tripp.)

tion. I got it for the benefit of the position that it held, that is all, and possible conflict and being convinced that there was a piece of open ground there through which we might wish to drive a tunnel or pass over or something of that sort,—anything that might come up, wherever it would be of benefit to the property.

Q. To drive a tunnel for what purpose?

A. Opening the mine.

Q. That is opening all this property you have been testifying about?

Objected to. Sustained.

Q. Mr. Shackleford went into an examination quite extensively about the ore bodies, formation, etc., as developed on this property. I will ask you if you intended to answer that question of Mr. Shackleford to be a positive one as to the condition of the ore bodies there or has there been sufficient development work carried on there to satisfy you as to the particular ore bodies there that you wanted to mine?

A. I don't know what other development work might discover—I couldn't tell that. I wouldn't lay down any rule or make any statement as to what might be found underground.

Q. The fact is, that is what you were hunting for, what was underground? [339]

A. That is what I wanted to find. I wanted to find some place to find something underground.

Q. Now, I believe you stated that you remained on that property and had something to do with it up

(Testimony of H. T. Tripp.)

to some time in 1910 or 1911?      A. Yes, sir, I did.

Q. Now, Mr. Tripp, I will ask you if you made any additional water locations upon this creek during any one of these years?      A. I did.

Q. I will hand you a paper, which is marked "Location of Water," and ask you if you know anything about that paper writing.

Mr. SHACKLEFORD.—We object to that as not part of the plaintiff's case in chief.

By the COURT.—How does it become material in this ejectment case?

Judge WINN.—The only way that I see that any of this evidence along this particular line is admissible is that I offer to follow it up and show the kind of possession that the plaintiff company had of this land \* \* \* they allege we never had any possession or were never on their claims—I think it is part of the scheme to carry out the development work as testified to, by the location of more water and will possibly have more strength in showing the development work, etc.

By the COURT.—If it is some act of assertion of possession in connection with development, prior to what you claim constitutes their ouster, you may show it for that purpose, if that is the only purpose.  
[340]

Judge WINN.—I think that is the only purpose I see at the present time for which it is material.

A. You asked me if I had anything to do with the location of a water right and I told you I had in 1910.

Q. And I hand you this paper and ask you if you



(Testimony of H. T. Tripp.)

know anything about that paper writing—can you identify it? A. Yes, sir. I wrote that paper.

Q. Now, I will ask you if you ever did anything else with that paper or a copy of it?

A. Yes, sir, I posted that notice or a copy of that notice. I took a piece of carbon and laid it down on the table or a board—a table—at the Ebner mine boarding-house, and laid this paper on top of it and wrote the notice. John Soini was waiting for me and we walked up and put it down. John Soini nailed it on a post of the dam on the morning of the 20th day of June, 1910.

Q. What dam is that?

A. That is the Ebner dam—at the old Ebner dam where the water comes out now,—that runs to the compressor and is now running the compressor.

Q. Then, you posted it about the intake of the Ebner flume, that he has been using water out of to run his old mill, near there?

A. There was a post up there that had been used for some purpose in connection with the head works of the intake and it was nailed to that post.

Q. Now, Mr. Tripp, that notice you have in your hand—did you have it recorded or did you turn it over to us to record? I have forgotten.

A. I turned it over to you to record. [341]

Judge WINN.—We would like to offer this in evidence and then read it into the record. This paper may be a very material paper in some other litigation.

Mr. HELLENTHAL.—We object to it unless it

(Testimony of H. T. Tripp.)

is connected with the Ebner company in the first place and it is shown it was recorded, and we object further that up to this time there has been no evidence offered or received relative to the rights acquired under the water notice,—what water it covered. This notice does not sufficiently comply with the customs of miners in this district, and it was not recorded until October 25, 1910, long after the rights of these parties had been initiated and large sums of money had been expended.

By the COURT.—We are not going into the equities between these parties on the claim for this water on this water notice or any question of estoppel in the appropriation of this water. It is simply allowed as affecting the title and possession of the plaintiff to the Parish #2, their claim of possession. I take it this is to be followed up—this was an assertion of the use of the water in the development of the entire property, including the Parish. It will be admitted, to be used in the final argument.

Judge WINN.—It is headed, “Location of Water. Notice is hereby given to all whom it may concern, that I, the undersigned, claim Ten thousand miners inches of water flowing in this creek, or any part of Ten thousand miners inches, that may be flowing at any season of the year—to be conveyed by ditch, flume or pipe along the bank of Gold Creek, on the southerly side, or to cross the creek with pipe or flume, or both, to any place on the property known [342] as the Ebner mine, or to carry across or further than the limits of the said mine property.

(Testimony of H. T. Tripp.)

This location is made on the ground this day and date and is posted at the place known as the Ebner dam, about  $11\frac{1}{4}$  miles up from Juneau on Gold Creek. Dated this 20th day of June, 1910. Time 7:30 A. M. Locator. H. T. Tripp. Witness John Soini."

On the back it is endorsed, "District of Alaska—Juneau—SS. The within instrument was filed for record at 10 A. M. o'clock on October 25, 1910, and duly recorded in Book 10 of Placers on page 186 of the Records of said district. C. C. Winn, Recorder."

Q. What was that water located for—for what purpose?

Mr. HELLENTHAL.—We object. The only way to make a water notice effective is to state the purpose of the water in the location itself—not being stated in the location, it cannot be supplied at this time.

Objection overruled. Defendant allowed an exception.

A. For the intended purpose of enlarging on the work and opening up and developing that mine and preserve the right for any additional amount required over and above the amount that had been used and acquired by the old Ebner mine.

Q. Mr. Tripp, Mr. Shackelford asked you if you were sent here by a stranger to this property to work on it. I will ask you who was the individual that you dealt with in making your arrangements to come here to work on this property.

A. F. L. Underwood, who was the president of the California & Nevada Copper Company, as I

(Testimony of H. T. Tripp.)

always supposed, and do yet and know, as well as I could know, that he was the president of that company.

Q. You heard Mr. Ebner's testimony, didn't you?  
[343] A. I did.

Q. That is the same F. L. Underwood that he referred to in his testimony in the case?

A. I don't see how it could be any other.

Q. That is a man that lives in New York?

A. Yes, sir.

Judge WINN.—That is all.

Mr. SHACKLEFORD.—Have you that letter you were going to produce at the time Mr. Tripp was examined?

Judge WINN.—No, I haven't any letter to that effect, nor Mr. Tripp has not. I got the agreement he had with Mr. Underwood mixed up with the letter—I didn't know at that time whether Mr. Tripp was working altogether under Mr. Underwood or Mr. Ebner.

(By Mr. SHACKLEFORD.)

Q. Whom was this water location made for?

A. Made for the people I was working for.

Q. Whom were you working for?

A. The California & Nevada Copper Company.

Q. You were not working for Mr. Ebner?

A. No, sir.

Q. You were not working for the Ebner Company?

A. No; that is, not with any intention on my part I was not.

(Testimony of H. T. Tripp.)

Q. Is there any account in the books of the California & Nevada Copper Company of the men employed on these 51 days' work you have mentioned?

A. No, the account shows how much money was expended and for what purpose, but it doesn't show the individuals.

Q. Does it show it was for the two lode claims?

A. Yes, sir. [344]

Q. And it don't segregate the amount for each one? A. No, it does not.

Q. Have you ever made any segregation of the amount done on each claim?

A. I had a segregation made, but I haven't it now.

Q. The fifty-one days you speak of, as I understand it, consisted of work done on this side hill, in dirt work? A. No, sir.

Q. Did you add to that the work that was done on this road over here?

A. All the work I did on those claims.

Q. And it included the building of a tram?

A. No, it didn't include the tram—I bought that wire, that is charged on that book, but I didn't count that in the sixty-one days.

Q. It included the work done on the road?

A. Yes, sir.

Q. How much work was done on the road?

A. I couldn't tell you just exactly.

Q. About what portion of it?

A. I guess that was ten days' work there.

Q. Did you mean fifty-one or sixty-one days?

A. Fifty-one.

(Testimony of H. T. Tripp.)

Q. And it also included the work done on this trail, starting on the Idaho Placer and crossing the Colorado lode and on up to the Enterprise and Royal? A. It included that trail I spoke of.

Q. Is the Royal, Enterprise and Apex part of it?

A. Part of the Ebner mine?

Q. Yes. [345]

A. No, they are not—I don't know what is part of the Ebner mine now, but it wasn't at that time. They were owned by individuals, or by somebody other than the Ebner Company.

Q. Other than the Ebner Company or the company you were working for? A. Yes, sir.

Q. And you did some of your prospecting up on that ground, on the Royal, etc.?

A. Not that year, I didn't. I did it very nearly that line.

Q. How many days of that fifty-one days was done on the trail, starting on the Idaho placer?

A. About two days, I suppose. I don't know. I couldn't tell you now.

Q. Can you give the Court any more definite idea about the segregation of the remaining days done on those two claims the Parish #1 and Parish #2?

A. I had a man by the name of Emil Capella and another Emil—I can't remember his name; it was a hard name—this Emil Capella was a good prospector and a man I could rely on to send out on that kind of work, and I had him employed for that purpose and he was working up above most of the time. I had him down on the Parish claims doing some



(Testimony of H. T. Tripp.)

work and he was assisted by this other Emil.

Q. I mean, can you give the Court any idea at all about the remaining days of that work—how much was done on the Parish Number 1 and how much was done on the Parish Number 2, and where it was done?

A. There was very little work done on the Parish #1.

Q. Except as the work done on the Parish #2 would tend to run through the Parish #1 and test that ground? A. Yes, sir. [346]

Q. All the work was done for the benefit of both claims?

A. For the benefit of both claims—that was my intention.

Q. Did you do any rock work? A. No, sir.

Q. No underground work at all?

A. I didn't do any underground work or didn't put in any blasts.

Q. Were you still on the property in controversy for the California & Nevada Company at the time you signed this notice?

A. June 20, 1910, yes, sir.

Q. When did you turn the property over to your successor?

A. The third day of August, 1910, I think it was.

Q. Was Mr. Ebner here when you first took charge of the property? A. Yes, sir.

Q. Was he in possession of the property at the time?

A. His watchman was there and had the keys.

(Testimony of H. T. Tripp.)

Q. Did you have a letter to the watchman?

A. I did not,—I spoke to Mr. Ebner. I told him I was ready to go up there and go to work.

Q. Where was Mr. Ebner?

A. I asked Mr. Ebner to go up there on the property and have the keys turned over to me, to my possession, and I went up there and I told Oscar Harri, “From this on you are working for me,” and I took the keys to the boarding-house and the office and the mill.

Q. Was there anything said by Mr. Ebner, between you, that led you to believe you were in the possession of the property for him or his company?

A. Mr. Ebner says, “Very well; you can go ahead; anything you want, but,” he says, “don’t move anything.” That was the exact wording that I remember and the circumstances of it, that I [347] was not to take anything away or remove anything from the property.

Q. That is about all that was said?

A. That is about all that was said; yes, sir.

Q. Since then all the expenses and bills have been paid by the California & Nevada Copper Company?

A. Up to the time I left them, yes, all that were paid and all the expenses were paid. I didn’t incur any expense on the property that I didn’t pay excepting perhaps there might have been two or three dollars or something.

Q. Did you do any work on this water right, covered by this notice of location?

A. No, sir, I did not.



(Testimony of H. T. Tripp.)

Q. What was the day you left?

A. That I left their employ?

Q. Yes.

A. I think I stopped the third day of August, 1910.

Q. Up to that time you had done no work on the water right? A. No, not as located by me.

Q. Do you know anything about the work that has subsequently been done on the Parish lode?

A. No, I haven't been up there at all. I have stayed away from there.

Q. But outside of the work you have described, there was no other work done on the Parish lode up to the time you left? A. Up to the time I left?

Q. Yes. A. I don't know that there was.

(By Judge WINN.)

Q. You didn't pretend to do the assessment work on these Parish [348] claims in 1910?

A. No, sir.

Q. You know that Mr. Ebner, acting for the Ebner Gold Mining Company, had some sort of arrangements with Mr. Underwood by which you were permitted to go on that property,—you knew that at the time you went on there?

Mr. HELLENTHAL.—We object as not the best evidence.

By the COURT.—The objection will be sustained, unless he was present at some conversation between those men—some preliminary questions to determine the test of his knowledge that it is competent evidence.

Q. You had been back to New York, Mr. Tripp,

(Testimony of H. T. Tripp.)

and had become acquainted with Mr. Underwood prior to your going on this property?     A. Yes, sir.

Q. And you had conversations sufficient with him and Mr. Ebner to know that it was only by the consent of Mr. Ebner, acting for the Ebner Gold Mining Company, that the Underwood people went upon the property,—you knew that, didn't you?

Objected to as leading.   Objection overruled.

A. As far as my work up there is concerned, I have a whole library of instructions in the shape of letters.

Q. I asked about the time that you say you were here and Mr. Ebner was here and he caused the keys to be turned over to you,—I say at that time did you or did you not know that there was some arrangements made between Mr. Ebner representing the Ebner Gold Mining Company and Mr. Underwood—I don't care what Mr. Underwood was representing, but between those two individuals—didn't you know that there was some arrangement made by which you were to go upon that property?   [349]

Objected to as not the best evidence.   Objection overruled.

A. I had every reason to believe that there was.

Q. You never saw any paper writing concerning it?

A. I never saw the bond for the property, from Mr. Ebner to anybody. I don't know what the reading of that bond was or whom it was to.

Q. You don't know whether it was an option on the property or an option on stock or anything about it?

(Testimony of H. T. Tripp.)

A. No, I do not; no, sir.

Q. Now, about the work on this water right, you know—you have been up there on the property and you know that those people who succeeded you in doing the work up there have done a great deal of work looking towards taking the water out of this creek, at the place where you located the water?

Objected to as leading. Objection sustained.

Q. I ask you if you know if the people who succeeded you, whether you know or not, whether they have done any work looking towards the appropriation and use of that water?

Mr. SHACKLEFORD.—We object as not part of the plaintiff's case.

Objection sustained. Plaintiff allowed an exception.

(By Mr. SHACKLEFORD.)

Q. When you say there was about ten days' work done on the roadway here, do you mean ten days' work with one man or crew?

A. No, I wouldn't call it a crew. I would say that one man would do that amount of work in ten days.

Q. You had several men working there?

A. Yes, sir; I didn't have one man exclusively. I didn't have one man continuously but sometimes there were two men. [350]

Q. When you started out to clean this road up, how big a crew did you put on there? I mean the road leading to the compressor.

A. I had two or three men working there.

Q. You don't remember how long you had them?

(Testimony of H. T. Tripp.)

A. No, I do not.

Q. How many men did you have working on the trail running through the Idaho Placer and the Colorado and on up to the Parish Number one?

A. I had one man working there.

Q. Who was that?      A. That was Dewey.

Q. Didn't you have a man working there named Tarpella?

A. That was the man I was trying to think of—he didn't work there, I don't think.

Q. He didn't work on the trail?

A. Not on that trail; no, sir.

Q. These men that were working up here in the vicinity of the Borean pit, was there any arrangement with them about their catching values, about their having any profit if they caught value in the sluice?      A. No, sir.

Q. The reason I ask that is I understand there was some report of a conversation in which you were joshing these men about their failure to get anything out of the hole. Do you remember any such conversation?

A. That was in regard to some work done perhaps on the Fractional Placer.

Q. There was a lay up there?

A. There was a lay up there; yes, sir. [351]

Afternoon Session.

**[Testimony of Ed Webster, for Plaintiff.]**

ED WEBSTER, called and sworn as a witness in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. How long have you lived in Alaska?

A. Since 1881.

Q. You were here during the year 1888?

A. Yes, sir.

Q. I have a map and plat here marked Plaintiff's Exhibit "N," which has a series of mining claims upon it, among those is the Parish, Lotta, Taku, Crown Point, Golden Fleece and Millsite lode and Webster Millsite, surveys number, the last two—283 and 76/B, respectively, and also the Humboldt lode. I will ask you if you know where that property is up the Basin. A. Yes, sir.

Q. Did you ever have anything to do with it in the way of an ownership?

A. Well, I located the Humboldt mine and took up the Millsite and Webster Millsite.

Q. You took up the Webster Millsite?

A. Yes, sir.

Q. Do you remember approximately when that was, about what year, when you located the Humboldt lode claim and took up the Millsite?

A. In 1882.

Q. Now, are you somewhat acquainted with the property known as the Ebner Gold Mining Company

(Testimony of Ed Webster.)

property?     A. Well, some of it.     [352]

Q. Who were the first persons, person or persons, that was the owner of that, that is as far as your memory serves you?

A. When I first came it belonged to Williams and Charles Wells and Dick Harris, and Joe Juneau, I believe, had an interest in it.

Q. Do you know a man that used to be here named Coulter?

A. Yes, sir, I know Coulter.

Q. Now, Mr. Webster, do you know anything about the survey that was made for the patent of this Ebner property, and I will state to you, for the purpose of letting you know the situation, the Lotta lode claim, the Taku lode claim, the Keystone and the Crown Point and the Golden Fleece are all embraced in one survey?

By the COURT.—Is the Golden Fleece included in that survey?

Judge WINN.—I think it is, your Honor.

A. I was there when they made the survey for the claim in 1888.

Q. Who made it?     A. Garside.

Q. You were there?     A. Yes, sir.

Q. Now, I will ask you if you at that time saw any corner posts or stakes set by Garside when he was making this survey.

A. When they made the survey for them they ran across our Millsite and of course I objected to that, and they told me they just merely wanted to square up their lines—



(Testimony of Ed Webster.)

Objected to. Objection overruled.

WITNESS.—(Continuing.) —and they just said they wanted to square up their lines and they would exclude that piece out from our property.

Mr. HELLENTHAL.—We object as hearsay and ask to have it [353] stricken.

Objection overruled and motion denied. Defendant allowed an exception.

Q. I will ask you to come down to this plat or map and look it over. I have shown this to you before.

A. Yes, sir.

Q. Defendant's Exhibit "N." I will ask you whether or not when Garside was making the survey in or about or across the Webster Millsite you saw any stakes set by him.

A. Yes, I was along with them when they set the stakes.

Q. Just point to this map and tell what stakes you saw—give them by the numbers you saw set there at that time.

\* \* \* \* \*

Q. You are pointing to the corner post marked 2 on one side and 6 on the other in red ink and purports to be one of the corner stakes common to the Keystone and Crown Point on the upper end line of those two claims?

A. Yes, sir; this one here, I remember that one—that is right opposite our dam.

Q. What do you mean by your dam?

A. Well, we had a dam right there in the creek.

Q. Were you using the water for any purpose on

(Testimony of Ed Webster.)

your mining claim?

A. Yes, sir, we were using it for the mill.

Q. And you built a dam in Gold Creek?

A. Yes, at the head of the falls.

Q. You left there in 1898?      A. Yes.

Q. Now, I will ask you if these stakes were in place there when you left. [354]

A. That I couldn't swear to. I suppose they were. I have seen them there quite often and they were in plain sight.

Q. That is, during your ownership of the property you saw them quite frequently?

A. Yes, I went up to see George Bach and Darow.

\* \* \*

Q. That was in 1898?

A. Yes, when they bought the mine.

Q. And had they always been in the same relative position upon the ground in reference to these other objects, or had they been changed, that is, during the time you knew them?

A. No, I don't think they were changed up to the time I left there.

Q. Where did you have your little mill that you worked your property?

A. Right in here; it was located about in here somewhere (indicating).

Q. On the Webster millsite?      A. Yes.

Q. Just about the upper end line of the Keystone and Taku lode.

A. Yes, sir; it was about 90 feet from here to the mill.



(Testimony of Ed Webster.)

Q. Ninety feet from what to the mill?

A. Where the bridge crosses here, down to our little mill.

Q. Now, do you remember any other stakes of the Millsite lode or the Webster millsite on the ground?

A. This one here, over here.

Judge WINN.—He is pointing to the stake numbered 1, 3 and 4 at the upper northeast end line of the Millsite lode.

Q. What explanation have you got to make about that?

A. That is where the lode and the millsite intersect and there is a little triangular piece there and the stakes stuck right together,—a little flatiron piece in there. [355] \* \* \*

Q. Do you know where the present fifteen-stamp Ebner mill is? A. Yes, sir.

Q. Do you know when that mill was built?

A. Yes, sir.

Q. What year? A. 1888.

Q. Was there any other mill ever put upon the Ebner property say between 1882 and 1888?

A. No, sir.

Q. Is the mill that is on the property up there now the same mill that was built in 1888? A. Yes, sir.

(By HELLENTHAL.)

Q. Wasn't that mill enlarged at one time?

A. Yes, it has been enlarged; it was built the same size, but left for more stamps at the time it was built, but the stamps have been enlarged.

Q. When was the mill enlarged?

(Testimony of Ed Webster.)

A. I don't remember the year.

Q. About the year?

A. Probably three or four years after it was built, anyway.

Q. And it was built about what time, what year?

A. It was built—I think the mill was finished late in the fall. I know they made a short run in 1888.

Q. In the fall of '88? A. Yes, sir.

Q. And about a matter of four years after that it was enlarged. A. I wouldn't swear to that.

Q. Somewheres along there?

A. Somewheres along there; yes. [356]

Q. The building was enlarged to the extent that the shingles now indicate upon the roof?

A. No, the mill was built the size and left for more room, if I understand it right, and the stamps were put in afterwards.

Q. Now, you say you saw Garside make the survey of the Taku and those other claims.

A. Yes, I was there on the ground—on the group.

Q. The Ebner group? A. Yes, sir.

Q. In making that survey he used an ordinary transit such as surveyors used? A. Yes, sir.

Q. Do you remember his setting up the transit on the different posts and sighting along the lines?

\* \* \* \* \*

Q. You have had a general knowledge of Gold Creek about that vicinity for a number of years?

A. Not since 1893.

Q. Before that time? A. Yes, sir.

Q. You know where the creek falls down through

(Testimony of Ed Webster.)

the canyon below there? A. Yes, sir.

Q. Is there any chance of that creek changing its course?

Judge WINN.—We object to that as not cross-examination.

By the COURT.—Do you want to make him your witness?

Mr. HELLENTHAL.—I will make him my witness.

Objection overruled.

Q. I will confine my question to the proximity of where the [357] stakes are—the creek up about where the Golden Fleece, the Taku and Keystone lode claims are, the creek has about the same course now as it had then?

A. Where do you mean, up this way?

Q. Yes.

Objected to as too remote. Question withdrawn.

Q. I will make him my own witness and ask him about the creek that flows through the Lotta. You know where the creek flows down across what is claimed by the Ebner Company as the Lotta claim on this map?

A. No; that is down through the canyon. I only know the creek from here.

Q. You have been down through that canyon?

A. No, I have never been through the canyon.

Q. Well, you have seen the canyon?

A. Yes, sir.

Q. You are familiar with the walls and creek of the canyon? A. Yes, sir.

(Testimony of Ed Webster.)

Q. Now, is there any chance of that creek changing its course in that canyon?

Judge WINN.—We object as leading and no sufficient foundation laid. Mr. Webster has not shown knowledge enough of the creek to testify concerning it and he has not testified he knows where the Lotta claim is.

Objection sustained. Defendant allowed an exception.

Q. What are the chances for the creek changing in that canyon? Are they apt to change or not apt to change?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. They couldn't change from the falls to the Snowslide. [358] There is no chance of its changing in there.

Q. No chance of its changing from the falls to Snowslide Gulch? A. No, sir.

Q. Where are the falls situated?

A. Right where the bridge crosses the creek.

Q. Whereabouts is that on this map?

A. That is the bridge there.

Q. That is near the place where the Webster mill-site and the Taku intersect? A. Yes.

Q. That is where the bridge is and where the falls are? A. Yes, sir.

Q. Where is Snowslide Gulch on this map?

A. I don't see it marked there.

Q. Do you know on what claim it is?

A. No, I don't know these claims down here.

(Testimony of Ed Webster.)

Q. Do you know where Snowslide Gulch is on the map now? A. Yes, sir; there it is.

Q. Is it correctly represented on that map?

A. I suppose it is correct—I couldn't swear to that.

Q. I mean, approximately.

A. Yes, sir, the trend of it looks right.

Q. And between the point on the Taku lode, where the Taku lode intersects the Webster millsite and the Snowslide Gulch, there is no chance of the creek changing its course?

A. No, sir, not in the canyon.

(By Judge WINN.)

Q. You have never owned any property along that portion of the creek you have just testified to, between the two points you have mentioned? [359]

A. No, sir.

Q. The consequence is you are not so well acquainted with that part of the creek as you would be where you owned property?

A. Yes, but I have been over the ground, over the ridge there, so many times I am pretty well acquainted with the trend of the creek; that is all.

Q. When were you up there last?

A. I was up there last year, to the Perseverance.

Q. You know along some places up there that the creek is wider than it is at other places?

A. Not in the canyon, what we call the canyon.

Q. But it is not all canyon, is it, down Snowslide Gulch?

A. Pretty near all canyon to the Snowslide Gulch.

Q. Does the width of the creek, that is, the regular

(Testimony of Ed Webster.)

water flow, ever change, that is the width of the water flow?    A. I don't think so.

Q. You think the thread of the water is the same width up there all the year round?

A. There may be freshets—there may be a time when the loose gravel will wash one side but it is very narrow all through there.

Q. I am referring to the thread. I mean by that the water, the actual width of the water flow—I don't mean from bank to bank. I mean the whole year around.

A. If I understand your question right, in the same stage of water it would run about the same place.

Q. The water is not the same stage all the year around?    A. No, sir.

Q. The water flow up there some seasons of the year is very slight? [360]

A. Yes, sir, it is at times.

Q. And sometimes a freshet?    A. Yes, sir.

Q. And when there is a freshet, the absolute width of the flow of the water would be wider, wouldn't it?

A. Well, yes.

Q. Now, I will ask you if you ever commenced at Snowslide Gulch and walked up in the bed of the creek—I mean way down in the canyon and walked up to the point you described on this map.

A. Yes, I have been through there.

Q. When were you through there last?

A. It has been quite a while since I was there. It is probably four years since I was there the last time.

Q. And the other observations that you have made



(Testimony of Ed Webster.)

on that part of the creek that you passed over were made when you were going up and down the Basin road? A. Yes, sir.

(By Mr. HELLENTHAL.)

Q. Of course, the creek is wider at high water than low water. A. Yes, sir.

*\*Q. But what I want to ask you now is whether the creek is about the same place at high water?*

A. Yes, sir.

Q. That is what I want to know, whether the centre of the creek changes with the changes in the stages of water, you understand. A. Yes, sir.

Q. The centre of the creek remains the same?  
[361] A. Yes, sir.

Q. Regardless of the stages of water?

A. Yes, sir.

(By Judge WINN.)

Q. Did you testify that near one of these posts that Garside put in there was a foot bridge or some sort of a bridge?

A. There was a bridge across there—this is the bridge right here, and the wagon road comes right across here and this is on a little knoll which is back of our cabin. Our cabin was right there.

Q. You are pointing to the corner post on the line of intersection of the Webster Millsite with the Takū lode claim? A. Yes, sir.

Q. And that stake you locate and remember it in

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\*Omitted words do not appear in original Certified Transcript of Record.



(Testimony of Ed Webster.)

relation to its position to the bridge?

A. Yes, you could see it right there at any time.

(By Mr. HELLENTHAL.)

Q. Where is that? A. This one here.

Q. That northerly stake?

A. The road comes there—you can see it right there—it is on a little knoll there back of the cabin.

Q. The stake at the intersection of the Webster millsite and the Taku lode? A. Yes, sir.

Q. How far is that from the creek?

A. It is probably forty or fifty feet there.

Q. It is probably forty or fifty feet from the creek, from the edge of the creek? [362]

A. I wouldn't say that from the bridge there, 40 or 50 feet, but right back of the cabin—the cabin sets about there.

Q. And the bridge is right there too?

A. I never measured it. I should judge that was the distance.

Q. And up from the creek about forty or fifty feet?

A. Yes, sir; you can see it from the back of the house, from the wagon road.

Q. You can see it from the wagon road?

A. Yes, sir.

Q. Standing on the side of a little knoll out from the creek forty or fifty feet and behind the cabin the same distance? A. Yes, sir.

By the COURT.—What was Garside locating a stake between your millsite and the Webster lode up there for, up the side line of the millsite, up near the road?

(Testimony of Ed Webster.)

A. I don't know what he put that one there for. It was all hewed out and brushed out and I was over the lines when they stuck the stake there, that is all. I objected to them putting them down on the other side because I thought they were unfair with our millsite.

(By Mr. HELLENTHAL.)

Q. Which side of the creek is that post—the south-westerly side, is it not? I mean the intersection post of the Taku.

A. That is on the right-hand side going up.

Q. They are all on the same side?

A. The other one is on the other side—this one is across the creek—

Judge WINN.—This one—he points to the one marked 2-6.

Mr. HELLENTHAL.—The common stake of the Millsite and Webster lode—and the other one?  
[363]

A. That is on the left-hand side going up and the other is on the right-hand side.

Q. The one on the right-hand side is a stake that crosses on the northerly end of the Taku lode, at the point of intersection of the Webster Millsite, on the southerly side of the creek?

A. Yes, sir, the right-hand going up.

Q. And the common point of the Crown Point and Keystone is also on the southerly side?

A. Yes, sir.

Q. The stake that Garside set where the Millsite Lode and the Webster Millsite join on the southerly

(Testimony of Ed Webster.)

end line, that is, on the other side?

A. Yes, sir, that is *acrosses*.

Witness excused. [364]

[**Testimony of B. M. Behrends, for Plaintiff.**]

B. M. BEHREND, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. Your name is B. M. Behrends and reside in Juneau. How long have you been here?

A. Since 1887.

Q. And what business have you been engaged in during that time principally?

A. Merchandising and banking.

Q. I will ask you if you were ever a stockholder or officer in the Ebner Gold Mining Company.

Mr. SHACKLEFORD.—We object as not the best evidence and immaterial. Objection overruled. Defendant allowed an exception.

A. I was.

Q. And did you ever own any stock in that company?

Same objection. Objection overruled. Exception allowed.

A. I did.

Q. I will ask you if you are acquainted with what is now the 15-stamp mill that is on the Ebner property, which has been referred to throughout this case as the William M. Ebner mill—you know where that mill is? A. Yes, sir.

(Testimony of B. M. Behrends.)

Q. Do you know when that mill was built?

A. I think in 1888.

Q. Do you know whether or not it was built its present size—I don't mean in reference to stamps, but the outside of the building?

A. I am quite sure it was.

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. You are not sure? [365]

A. I think so, as far as my recollection goes.

Q. To the best of your recollection, that is true?

A. Yes, sir.

Q. But you don't know whether your recollection is correct on that point or not?

A. No, I wouldn't be sure. Some addition may have been put to it.

Mr. SHACKLEFORD.—That is all.

Witness excused. [366]

**[Testimony of Charley Wells, for Plaintiff.]**

CHARLEY WELLS, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. Your name is Charley Wells and you are a resident at Juneau? A. Yes, sir.

Q. How long have you been in Juneau?

A. Since the fall of 1880.

Q. Do you know where the present mill is on the Ebner property? A. Yes, sir.

Q. Do you know when that mill was built?

(Testimony of Charley Wells.)

A. Yes, sir.

Q. What year?      A. 1888.

Q. Do you know who built it?

A. Sam Coulter—well, Mr. Van Brunt was the superintendent.

Q. You heard Ed Webster's testimony a while ago?      A. Yes, sir.

Q. Do you know where the Humboldt mill is up there?      A. Yes, sir.

Q. Do you know when that was built?

A. I do.

Q. When was it?

A. I think in 1883, 1882 or 1883—I don't know which. I think it was 1882 they started in. I don't know whether they finished it or not that year.

Q. Do you know with respect to the present size of the Ebner mill—I don't mean the number of stamps in it but the size of the building, whether it has been changed or not?

A. Mr. McLaughlin told me— [367]

Q. When did you first see it?

A. It was built for fifteen stamps and they only put in ten.

Q. When did you first see the mill building after its completion?

A. I think they started in the latter part of July—they finished the road up here first on this side, the right-hand side going up and built a bridge across the Snowslide.

Q. Do you know whether or not the mill has always been the same size? I mean the building.

(Testimony of Charley Wells.)

A. To my knowledge it ain't any bigger now than the day it was put up. Just about the same size.

Q. It was first a ten-stamp mill? A. Yes, sir.

Q. And then there were five stamps added?

A. Yes, there were five stamps added to it, I suppose. I never was in the mill since Ebner took it.

Q. You have seen it, passing up and down the road there a good many times? A. Yes, sir.

Q. What is the approximate size of that Humboldt mill—do you know that—the size of what is called the Humboldt mill up there?

A. A five-stamp mill.

Q. That is the one Mr. Webster spoke about?

A. Yes, sir.

Q. You heard his testimony? A. Yes, sir.

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. With reference to where the Ebner mill now is—you are acquainted with the Lotta location?  
[368]

Objected to as not proper cross-examination. Objection overruled. Plaintiff allowed an exception.

A. I don't know a patent stake on the ground.

Q. You were one of the original locators on this hillside?

A. I located the Taku, Keystone, Crown Point and Golden Fleece and helped to locate the Grand Review.

Q. You spent a good deal of time on the hillside?

A. I spent eight years there.

Q. During what years?



(Testimony of Charley Wells.)

A. From the spring of '81 to the fall of '88, until I sold out.

Q. Is the Lotta claim in the same position now, as indicated upon this map, as when you first knew it, with reference to the position of the Ebner mill?

Objected to as not cross-examination.

Objection sustained. Defendant allowed an exception.

Witness excused.

Judge WINN.—I have here, Mr. Hellenthal and Mr. Shackelford, a book termed “Manual of Instructions.” Do you desire me to make any further identification of that book than shown upon the face of it, on the first page?

Mr. SHACKLEFORD.—I certainly do. We require the Manual of Instructions that were in force at the time these surveys were made.

Judge WINN.—I will call Mr. Hill for further redirect examination. [369]

**[Testimony of Lloyd Hill, for Plaintiff (Recalled).]**

LLOYD HILL recalled:

(By Judge WINN.)

Q. You were on the witness-stand the other day on both direct and cross-examination. I omitted on redirect examination to put some questions to you on matters brought out on the cross-examination. Mr. Hellenthal asked you something about your having been in some way or other connected at one time with the location of what is known as the Oregon claim?

A. Yes, sir, he did.

Q. You know a man named Nevins?

(Testimony of Lloyd Hill.)

A. I do.

Q. Who accompanied you at the time you marked out the boundary lines of the Oregon claim?

A. Garside and my brother and one other assistant, I think, and myself.

Q. Did you see this man named Nevins up there at any time during the staking out of the claim?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. All the arrangements were made for the location of the claim with Mr. Nevins at the Alaska-Juneau mine and at my office in Juneau, Alaska—Garside & Hill's offices, in Juneau.

Q. What was Mr. Nevins engaged in at that time, what business?

Same objection. Objection overruled. Defendant allowed an exception.

A. He was superintendent of the Alaska-Juneau mine.

Q. The Alaska-Juneau mine—where is it located, the buildings and mills? [370]

A. The mills and buildings are located on the south side of Silver Bow Basin, about three miles and a half from Juneau.

Q. I will ask you, at the time you were making this location, if you had any conversation with Mr. Nevins about the location, one way or the other?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial and hearsay.

(Testimony of Lloyd Hill.)

Objection overruled. Defendant allowed an exception.

A. I did.

Q. What was that?

Same objection. Question withdrawn.

Q. Now, this claim, from the location notice, apparently was taken in the name of J. P. Corbus. I will ask you if Mr. Corbus was on the ground and had anything to do about the location of the claim as far as you know.

A. Had nothing to do with the location.

Q. Did you have any conversations with Mr. Corbus one way or the other concerning the location of the claim?     A. No, sir.

Q. Did you ever have any conversation with Mr. Corbus about the location of the claim?

A. No.

Q. At whose request, then, was it that you and Garside went up there and made the location?

A. The request of Mr. Nevins—Archibald Nevins.

Q. And he was then superintendent of the defendant company in this case, the Alaska-Juneau Gold Mining Company?     A. He was.

Q. Now, then, I will ask you to state what this conversation was that you had with Mr. Nevins at the time you made the location [371] or any time thereafter, concerning this location.

Mr. HELLENTHAL.—We object as hearsay, incompetent, irrelevant and immaterial.

Objection sustained. Plaintiff allowed an exception.

(Testimony of Lloyd Hill.)

Mr. HELLENTHAL.—We will admit that Mr. Nevins was the superintendent of the Alaska-Juneau, and whatever instruction he gave to Mr. Hill was as the agent of the Alaska-Juneau Company.

Q. What conversation, if any, did you have with Mr. Nevins at the time of the location of the claim?

By the COURT.—What do you expect to show by this witness?

Judge WINN.—I expect to show by this witness that Mr. Nevins became aware of the fact that this property was staked over prior locations and that both Nevins and afterwards Mr. Joseph McDonald, the superintendent of the Alaska-Juneau Company, abandoned this claim. I will prove also by Mr. Ebner that Nevins told him that he would go and pull up his stakes and he went and pulled up his stakes to avoid any conflict with the Lotta, ostensibly over on the Lotta or Parish No. 2; and then we will show further on, we expect to show by Mr. Hill, that when he took his instructions from Mr. McDonald that he was then superintendent of the Treadwell Mine and the defendant company, and after the title had been conveyed from Corbus to this company, that when he surveyed the Colorado claim that he had a conversation with Mr. McDonald about any other surveying to be done up there, and McDonald told him that he didn't want anything done with any other claim except the Colorado.

By the COURT.—Your offer is getting too large for the present question. If you can show by the witness that after locating the Oregon that he was

(Testimony of Lloyd Hill.)

directed to pull up the [372] stakes, you may show that, but I don't believe that Nevins, the scope of his authority was such that he could omit away a title. His employment might be such, being superintendent or manager or whatever he was, to direct this witness to go and pull up those stakes and effect an abandonment in that way by his actions, but to go to work and in a general conversation omit away the title to this property—I don't believe you can show that.

Judge WINN.—I don't believe I can state just the conversation he had—if you will permit me to have Mr. Hill tell it—

By the COURT.—Mr. Hill may answer, if he understands the ruling of the Court regarding the parts of the conversation that are admissible. If he answers wide of that mark it will be stricken out.

A. The conversation was short. In the main, Mr. Nevins said that he found out that the Oregon location conflicted with a claim claimed by Mr. Ebner up Gold Creek and he didn't care to have any litigation in regard to it; that was the first conversation. He asked me why I made the location there that way. I said I didn't know at that time that the ground was not subject to location,—that I knew nothing of the Ebner location or the Parish Number 2 lode.

Q. Was that all the conversation you had with Mr. Nevins? A. Yes, sir; I think it was.

Mr. HELLENTHAL.—We move to strike for the reasons stated—because it is not an admission within

(Testimony of Lloyd Hill.)

the scope of Nevins employment and authority, and hearsay testimony.

By the COURT.—I hardly think that Nevins' statement to him afterwards, when he found out the mistake, would be tending to explain his conduct at the time he made it. They tried [373] to impeach him by showing he went on there and made the survey without telling them and this does not explain that at all. The motion to strike will be granted.

To which ruling plaintiff is allowed an exception.

Q. Mr. Hill, Mr. Hellenthal interrogated you considerably about what is called the Colorado claim and the survey of that claim. I will ask you who was the superintendent of the Alaska-Juneau Gold Mining Company, the defendant in this case, at the time you made the survey of the Colorado claim?

Objected to. Overruled. Defendant allowed an exception.

A. I am not absolutely certain but all arrangements for the survey were made with Mr. McDoanld.

Q. Joseph McDonald? A. Yes, sir.

Q. What position was he acting in then?

A. He was the superintendent of the Alaska-Treadwell Consolidated group of mines.

Q. Do you know whether he had anything to do with the Alaska-Juneau mines at that time?

A. I think he was superintendent of that also.

Objected to as not the best evidence. Objection overruled.

Defendant allowed an exception.

Q. What conversations did you have, if any, with



(Testimony of Lloyd Hill.)

Mr. McDonald about making the survey of this Colorado claim?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial and hearsay.

By the COURT.—He may answer. You may raise the question on a motion to strike.

A. He sent for me as to what claims to survey for patent at [374] the head of Last Chance Basin, the Alaska-Juneau claims. He asked me in regard to the work that had been done on them and I told him and explained the situation of the Oregon, its conflicting with those locations of Ebner's, and he said, "We will not survey the Oregon for patent." He says, "We will survey the Idaho and Colorado for patent and better throw that Oregon location up, anyway"; that was all.

Mr. SHACKLEFORD.—We move to strike the answer because it is not binding upon the defendant company.

By the COURT.—Unless you can show that Mr. McDonald was superintendent or manager of the Alaska-Juneau, it will be stricken.

Judge WINN.—I will follow that up but I can't do it with Mr. Hill.

By the COURT.—Unless you can connect it, it will be stricken.

Mr. HELLENTHAL.—We move it be stricken as hearsay. There is no evidence now anywhere which can be offered to show that Mr. McDonald had authority to abandon the property of the Alaska-Juneau.

(Testimony of Lloyd Hill.)

Mr. SHACKLEFORD.—We will also ask to strike the last sentence of the witness' answer after he refers to the directions for the survey to letting the Oregon go, for the reason that no authority is shown from the company to Mr. McDonald to make such a declaration or commit such an act on their part. It is paramount to the surrender of title.

By the COURT.—Mr. Nevins' conversation was a general conversation, not connected with the work, and I struck that out, but this is on the offer of plaintiff's counsel to show the general authority of Mr. McDonald. This will be allowed to stand, but will be stricken out if he fails to [375] show the general authority of McDonald to represent the defendant company.

Q. Mr. Hill, are you well acquainted with the creek-bed and the creek at or near Corner Number 2 of the Lotta lode claim, etc.?

\* \* \* \* \*

Q. How long have you been acquainted with the kind of implements and the chains, etc., they use here in surveying? A. About thirteen years.

Q. How were the methods and means of measurement, etc., when you first came here?

A. They were not as good as they are now by any means.

Cross-examination.

(By Mr. HELLENTHAL.)

\* \* \* \* \*

Q. Mr. Nevins is dead? A. I don't know.

Q. He is not in the country, anyhow?

(Testimony of Lloyd Hill.)

A. He is not in the country.

Q. You haven't seen him for many years?

A. No, I haven't seen him for many years.

Q. Mr. McDonald has left the country?

A. Mr. McDonald is out of the country.

Q. Down in Mexico somewhere?

A. Yes, I think so.

Q. Mr. Hill, I will ask you this question. When you went up there to stake the Oregon lode claim for Mr. Nevins, as you testified, Nevins told you to go up there? A. Yes, sir.

Q. Mr. Nevins was acting in the capacity of superintendent of the Alaska-Juneau company when he asked you to do it? [376]

A. Yes, sir.

Q. And you went up there to locate a—to stake a lode claim for the Alaska-Juneau Company at the request of Mr. Nevins? A. Yes, sir.

Q. And you did stake a lode claim? A. I did.

Q. You staked a lode claim along the lines indicated by the Oregon location notice? A. I did.

Q. You put the four corner posts in the ground?

A. I did.

Q. At the points indicated by the measurements on the location?

A. I think I put five corner posts in the ground.

Q. Can you state where the four corner posts were put?

A. One post was put down at Corner 3, identical with corner 3 of survey 142—that would be the south-west corner post of the Oregon location, indicated

(Testimony of Lloyd Hill.)

on the map, Exhibit "N"—

Q. It shows here on this map as the northwesterly corner post of the Colorado—that is the identical post? A. Yes, sir.

Q. That is one of the posts you set that day?

A. Yes, sir.

Q. Where is the other one?

A. The other stake extends in a northeasterly direction, extended, at that time, 1500 feet, I think, and was placed on the end line of the Forrest lode.

Q. Can you locate it on the map here?

A. It is located on the west end line of the Forrest lode, survey 545. [377]

Q. Put a little mark there of some kind to indicate where it is? A. It is about in here.

Q. Put the letter "A" there.

(Witness does so.)

Q. A on exhibit "N" is what you testify to?

A. Yes, sir.

Q. Where did you put any other stake?

A. I then put another stake, I think, a hundred and some odd feet in a northeasterly direction. It would be the northeast end line of the Oregon, where it intersects the Lotta lode, as the same now stands upon the ground.

Q. Please put a letter "B" there.

(Witness does so.)

Q. Now, put the letter "C" where you put the next stake?

A. I then ran down five hundred and some odd feet down on the side line of the Lotta claim, I think.

(Testimony of Lloyd Hill.)

Q. Put the letter "C" there.

(Witness does so.)

Q. Now, run down to where you put the next stake and put the letter "E" there.

A. I put the next stake on the north side line of the Colorado lode, at the point I mark "E" on exhibit "N."

Q. Now, those four stakes were put there by you for the Alaska-Juneau Company at the request of Mr. Nevins?     A. Yes, sir.

Q. That was in the fall of '99.     A. Yes, sir.

Q. Do you know in what month?

A. No, I wouldn't be certain about the month.

Q. When you located those stakes there and located that claim [378] did you see any lines brushed out that you crossed—did you cross any lines that were brushed out that you saw?

Judge WINN.—I object to that. It is not proper cross-examination. Objection overruled. Plaintiff allowed an exception.

A. I don't recollect that I did; no, but then I didn't travel around the entire side and end lines of the Lotta claim.

Q. You went from stake to stake?

A. Yes, but I couldn't go direct from stake to stake. I had to traverse around more or less. It is impossible to go over some country.

Q. It is a country that has a lot of brush in it?

A. Yes, sir; and a lot of rocky precipitous hillsides.

Q. You didn't see, however, any lines brushed out in this brush as you walked around?

(Testimony of Lloyd Hill.)

A. I saw—the lines that I saw brushed out were the Lotta line. I saw that—that would be the line 5-6 of the Lotta claim.

Q. You remember seeing that brushed out?

A. Yes, sir; that was brushed out.

Q. But no other lines you remember as being brushed out on that? A. No, sir.

Q. You crossed in locating that claim, you traversed, the side lines of the Parish #2 as located on this ground, did you not?

A. I did of that portion between stakes, between stake "B" and stake "C," which is identical with the Lotta side line.

Q. When you went to stake "E," did you get there?

A. When I went to stake "E," I went down to the Last Chance corner, which is marked here—that would be the southwest corner of the Oregon, and ran up along the Colorado side line, the north side line. [379]

Q. When you started, commencing at the beginning point where you started your survey, you ran a line then to the point you have marked here with the letter "A"—you ran a line from where you started?

A. No, I didn't run that line right there.

Q. How did you run it?

A. I had points on the road that I knew the position of that point and from plats that I had in the office.

Q. You, however, crossed the side line of the Parish as now located?



(Testimony of Lloyd Hill.)

A. Yes, I crossed the side line of the Parish.  
(By Judge WINN.)

Q. Mr. Hellenthal asked you if Mr. Nevins was out of the country and Mr. McDonald out of the country. I will ask you, along here several months ago, last August, at the time we were making application for a restraining order in this case, if you didn't there make an affidavit and testify both as to the fact of the conversations you had with Mr. Nevins and Mr. McDonald?

A. I think I did; yes, sir.  
(By Mr. HELLENTHAL.)

Q. Did you or did you not at that time testify to these conversations, in an affidavit or otherwise—did you or did you not?

A. I think I did, yes, sir,—I am of that opinion.

Q. How sure do you think about that now?

A. I am pretty sure of it. I don't remember the sum and substance of them, but they were along the line I testified to here. [380]

Q. Did you testify as to the conversation with Nevins, either by affidavit or otherwise?

A. I think so; yes, sir.

Q. Do you remember now how you did it—by affidavit or otherwise—whether it was by affidavit or otherwise?

A. I think I told it in both the affidavit and testimony.

Q. Told it both ways?      A. Yes, sir.

Q. The conversation you had with Nevins?

A. Yes, sir.

(Testimony of Lloyd Hill.)

Q. Now, you are pretty sure about that?

A. I am pretty positive.

Q. How about this McDonald conversation—by affidavit or otherwise, or oral testimony?

A. I am of opinion that was on the stand.

Q. When you say you are of opinion, are you pretty sure you so testified on the stand?

A. I am pretty sure.

Q. Your recollection on that question is pretty clear, quite clear? A. Yes, sir.

Q. And clear enough on it to go on oath and testify that you did so testify?

Objected to. Sustained.

Witness excused. [381]

**[Testimony of Martin George, for Plaintiff.]**

MARTIN GEORGE, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. Where do you live? A. Juneau.

Q. How long have you lived in Juneau?

A. With the exception of a few years in Sitka since 1897.

Q. What business have you been engaged in since 1897 principally?

A. I was mining up to 1901. Since then I have been in the surveyor general's office.

Q. You have been in the surveyor general's office since 1901? A. Yes, sir.

Q. In what capacity have you been in the surveyor

(Testimony of Martin George.)

general's office?      A. Chief draughtsman.

Q. I will ask you, Mr. George, if being in the office doing the work you have testified concerning, if you have become familiar with the instructions and rules and regulations, etc., pertaining to government surveys—mineral and nonmineral.

A. I presume so; fairly well, yes, sir.

Q. Have you been requested some time this afternoon by Mr. Burton to search in the office of the surveyor general to ascertain whether or not any rules or regulations, in any authentic form, as they existed in 1888 are in that office?      A. Yes, sir.

Q. Could you find any?      A. There were none.

Q. The oldest manual of rules and instructions was what?

A. 1895, I think—'95 or '96. It is 1895. The surveyor general's [382] office was only established in Alaska in 1897.

Q. Prior to 1897, what official did that business?

A. The United States marshal was ex-officio surveyor general.

Q. When the duties of that office were turned over to your office, did they turn the records of the other office over to your office?

A. I was not in the office at that time, but there were very few records turned over.

Q. Are you one of the custodians of the records down there, of the surveyor general's office?

A. Of the plats and field-notes.

Q. When Mr. Burton went down there this afternoon you looked through the office and the records of

(Testimony of Martin George.)

the office, papers and files, did you, to find out whether or not you had any such rules and regulations that dated further back than 1895?

A. I knew there were none other than those.

Q. You know that now?

A. I knew there were none other than I gave to Mr. Burton.

Q. This manual I will have identified—this is the one Mr. George testifies to as being dated 1895. It is marked for identification, Plaintiff's Exhibit "P."

Judge WINN.—If I desire to offer any of the rules or regulations from it later on, I will offer them to the Court, to be read into the record.

Mr. SHACKLEFORD.—We will ask the Court to have it introduced in connection with the testimony of the witness.

By the COURT.—It is now in the custody of the Court and the Court will hear you later regarding anything you wish to offer.

Q. I will hand you a little red book marked "Manual of Instructions for the Survey of the Mineral Lands of the United [383] States," dated in March, 1909. I will ask you what that book is.

A. It is the latest mineral manual that has been issued.

Q. Those rules and regulations are the rules and regulations and instructions that govern your office now? A. Yes, sir.

Q. Is there any other set of officials that these rules apply to and the instructions?

A. Mineral surveyors.

(Testimony of Martin George.)

Q. I will have this identified at this time and later on I will examine into what I desire to offer.

It is marked for identification, Plaintiff's Exhibit "Q."

Q. Are any duties incumbent upon you by virtue of the position you occupy with the surveyor general, such that you have anything to do with the return of either deputy mineral or land surveyors—surveys that they make of different lands in Alaska?

A. I examine the returns; yes, sir.

Q. Now, I ask you, in case of a mineral survey, if there are any errors made in it, what is done with that survey with respect to correcting those errors?

A. It is sent back to the deputy.

Q. Suppose, Mr. George, that after a survey leaves your office and is forwarded to the Commissioner of the General Land Office at Washington, D. C., on application for patent, and if that office there happen upon some errors which your office has overlooked or some corrections they desire to have made, what then does the general land office do with that survey?

Mr. SHACKLEFORD.—We object to that. It refers to the present practice. If the witness is qualified to testify to the [384] practice at the time the surveys in question took place, that would be different. The witness is not qualified.

Objection sustained. Plaintiff allowed an exception.

Q. Do you know anything about what the practice was in 1888 in respect to the question of the—the question I asked you? A. I do not.

(Testimony of Martin George.)

Q. You know what it is since you have been in the office of the surveyor-general? A. Yes, sir.

Judge WINN.—Now, I ask that the witness be permitted to answer the question the Court ruled out.

By the COURT.—Make your offer.

Judge WINN.—We offer to prove by this witness that ever since he has been connected with the surveyor-general's office, that the practice is that if after the survey has been made and approved and after the papers are forwarded to Washington to the commissioner of the general land office, any errors are discovered, that then the survey is sent back either to the surveyor general for correction, if it can be done by him, and if not it has to be sent to the field surveyor, the deputy, to make such corrections as directed by the commissioner of the general land office.

By the COURT.—On the objection of defendant the offer will be denied.

Plaintiff allowed an exception to the ruling.

Q. I present to you Plaintiff's Exhibit "O," which is a certified copy of a certain survey containing quite a number of claims, and I will ask you if at the time that this plat, or the original of this plat, together with the field-notes, etc., were forwarded to the Land Office at Washington City, [385] any errors had been discovered, would they undertake to correct it there or would it have been sent back here for correction?

Objected to for the same reason.

By the COURT.—The qualification of the witness



(Testimony of Martin George.)

to testify to the fact has not been shown. Objection sustained.

Judge WINN.—If your Honor holds I should go back to 1888, I cannot do it.

By the COURT.—These matters taking place between the time this survey was made and the time this witness came into the office renders it doubtful whether the practice might have been the same, so I will sustain the objection.

Plaintiff allowed an exception to the ruling of the Court.

Q. Have you anything in your office in the way of records that would show as to whether or not the plat which you have in your hand, which is Exhibit “O,” is a certified copy of the plat upon which the patent was granted in that case?

Mr. SHACKLEFORD.—We object to that as not the best evidence.

By the COURT.—It is preliminary. Objection overruled.

A. This is a copy of the official plat in the case of the survey on which the patent was granted.

Witness excused.

Whereupon court took a recess until Wednesday, May 31, 1912, at 10 A. M. [386]

Wednesday, May 31, 1912—Morning Session.

**[Testimony of Al Black, for Plaintiff.]**

AL BLACK, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. What is your name?      A. Al Black.

Q. Where do you reside?      A. Juneau.

Q. How long have you lived in Alaska?

A. Since 1892.

Q. What has been your business generally during this period of time—what have you been engaged in in Alaska?

A. Well, I have been teaming, mining,—most anything.

Q. You are somewhat acquainted with what is known as the Ebner property up here in Silver Bow Basin, the Ebner Gold Mining Company property.

A. Yes, sir.

Q. I will ask you if you know anything about the time that some negotiations were going on for settling some disputed matter between Mr. Ebner's company and the Alaska-Juneau Company over some portions of the Colorado mining claim, which conflicted with the Parish #1 mining claim?

A. Yes, I know something about that.

Q. Do you remember who was acting as attorney for Mr. Ebner in that case?

A. At that time I think it was Judge Lyons.

Q. Did you ever take Judge Lyons up there on this

(Testimony of Al Black.)

property to show him any stakes that are on the property?

A. No, I didn't take him up there. I was working for the Alaska [387] Transfer Co. then and I ain't sure whether he went up with Mr. Ebner in the wagon or they walked up, but they were there and I was there when they were talking about the stakes.

Q. I will ask you whether you went over on the ground at that time to look for any stakes with Mr. Ebner and Judge Lyons?

A. No; I was right there on the road.

Q. You were not working for the company at that time but were in the Transfer business and took them up in a wagon? A. Yes, sir.

Q. You know where the Ebner dam is on Gold Creek up above the Ebner mill? A. I do.

Q. Is the dam that is there for the purpose of an intake to the new flume-line the same as the old dam or has it been rebuilt or changed any?

A. Well, it is practically the same dam; it is changed some.

Q. In 1910 did you do any work under Mr. Mackey on this property? A. I did.

Q. Do you remember about the date that you commenced to work up there under Mr. Mackey in 1910?

A. The 11th day of August.

Q. What work did you commence performing up there at that time?

A. I started in brushing up a clearing and right of way for the flume-line.

Q. What flume-line?

(Testimony of Al Black.)

A. A new flume-line that they built for the new building or was supposed to be for the new mill.

Q. Now, whereabouts on that flume-line on the 11th of August did you commence to work? [388]

A. Right at the dam.

Q. That is the Ebner dam?

A. Yes; I started in clearing the right of way right there.

Q. What, if anything, was afterwards constructed over that right of way that you were clearing out?

A. Well, there were several things. There was a tent put up there and there were several fences built there across it.

Q. What did the company that Mr. Mackey was working for, what work did they do, if anything, over this flume-line that you commenced clearing up—did they use it for any purpose?

A. They built a flume there.

Q. That is that new high line flume?

A. Yes, sir.

Mr. SHACKLEFORD.—We object to that as immaterial and move to strike.

By the COURT.—Its materiality is rather doubtful in this case, but if you don't go into it too extensively, it may stand.

Q. How long through the summer of 1910 did you continue in the service of Mr. Mackey doing work in and upon this property?

A. Well, I started in there on the 11th day of August and I worked there all that year—all last

(Testimony of Al Black.)

year and some time in January I went away from there.

Q. I would ask you, Mr. Black, if while you were in the service of Mr. Mackey performing this labor upon this property, if you became acquainted with a little cabin on the right-hand bank of the creek as you go up the creek, from which cabin there is a brushed-out line across the creek to the other side, from the creek up to the road—do you remember any little cabin down there on that brushed-out line across the creek? [389]

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial, unless it is on the property in controversy.

Objection overruled. Defendant allowed an exception.

A. Yes, I know where that cabin is.

Q. Now, did you have anything to do with brushing out that line across the creek? A. I did.

Q. What, if any, work did you do on that in 1910?

A. Well, I brushed out the lower side line of the Lotta claim.

Mr. SHACKLEFORD.—We move to strike that out as incompetent, irrelevant and immaterial.

By the COURT.—It may be preliminary. Objection overruled and motion denied. Defendant allowed an exception.

Q. I ask you, about that cabin that you said a while ago you saw on the right-hand side of the creek as you go up there, if there is any stake there that you ever saw near the cabin.

(Testimony of Al Black.)

A. Well, there is not right at the cabin—a little ways from the cabin there is a stake of the Lotta.

Q. Now, with reference to that stake and the cabin, I understand the line you brushed out was brushed out clear out across the creek, up to the creek and also on the left-hand side of the creek? A. Yes.

Q. That is the line you have reference to that you worked on? A. Yes, sir.

Q. Now, did you during your work up there become also acquainted with any stakes that were claimed to be the stakes of the Parish #2 lode claim?

A. Yes, I did. [390]

Q. You know Mr. Kenzie? A. Yes, sir.

Q. And you know Mr. Kennedy, the assistant superintendent of the Treadwell Company?

A. Yes, sir.

Q. Now, during the summer of 1910, what time did you observe either one of these gentlemen and a man by the name of Burch up there on any of the property which you have referred to as the Lotta property and the Parish #2 lode claim?

A. The first time I seen Mr. Kennedy or Mr. Kenzie, I think it was the 26th—I mean Mr. Kenzie and Mr. Burch—it was the 26th.

Q. About the 26th of what month?

A. Of September.

Q. Did you ever about that time, either before or after the 26th, right along about that time, see Mr. Kennedy up there also?

A. I saw Mr. Kennedy, I think it was the first of October.



(Testimony of Al Black.)

Q. You say on or about the 26th of September you saw Mr. Kenzie and Mr. Burch—where were they up there when you saw them?

A. I saw them up on what is known as the Lotta claim—they came up there.

Q. Did you have any conversation with either one of them at that time?

A. I had a conversation with Mr. Kenzie.

Q. Concerning this property and as to who was in possession of it, etc.

Objected to as leading. Objection sustained.

Q. What was the conversation you had with Mr. Kenzie in reference to it?

Mr. SHACKLEFORD.—We object to the form of the question as calling [391] for a conclusion of the witness.

Objection overruled. Defendant allowed an exception.

Q. (By the COURT.) Did you have more than one conversation with him?

A. Yes, I did, that day.

Q. What was the first conversation with him?

A. He came up there—one of the boys had been blasting up there.

Q. Now, when you say one of the boys, whose boy do you mean? A. One of the Ebner men.

Q. He had been blasting where?

A. He had been blasting on the hillside.

Q. On what claim? A. On the Lotta claim.

Q. Now, go on and tell the conversation you had with Mr. Kenzie—was Mr. Burch present?

(Testimony of Al Black.)

A. Yes.

Q. Go on and tell the conversation.

By the COURT.—Who is Burch?

Judge WINN.—It will be shown later on.

Mr. SHACKLEFORD.—He is one of the engineers of the company.

A. I was there on the Lotta claim sitting down talking to this Middleton and, I think, Seitz, when Mr. Kenzie and Mr. Burch came up. Kenzie was about, I should judge, forty or fifty feet ahead of Burch, and he says, “Who fired that shot?” and I says—

Mr. SHACKLEFORD.—I don’t see the materiality of this evidence, about an altercation between the parties—

By the COURT.—Only as it bears on the matter of possession—

Objection overruled. Defendant allowed an exception.

Q. Go ahead and tell the conversation or substantially what was said there. [392]

A. He says, “Who fired that shot—did you fire it?” Al and I says, “No; who fired it?” and I pointed to Middleton, and he started over after Middleton, and I told him—I says, “Here, Mr. Kenzie, don’t jump that kid,” I says, “if you want to jump anyone, jump me,” or something to that effect, and I says, “He is only a boy and done as he was told,” and then we had some words there and I told him, I says, “I am only working here for wages, and the best thing you can do is to go up and see Mr. Mackey—Mr.

(Testimony of Al Black.)

Mackey is running it and I am working under him," and he says, "Where is Mackey?" And I says, "He was up at the blacksmith-shop when I came down." "Well," he says, "we will go up and see him," and I says, "I would go along with him," and we went up there and Mr. Mackey wasn't there, and I thought maybe he was over on the grade and we went over on the grade, and they said he had just gone down the road; so we went over—or I told Mr. Kenzie he had just gone down the road and if he hurried up he might catch him, or something like that, so he said he would go and see him and make some arrangements with him. I told him I would see Mr. Mackey when I went down that night and whatever agreement they came to why I would do as Mr. Mackey said, or something like that, and he said he wanted their men to work there, and I told him they couldn't work or I wasn't going to let them work. He said he hadn't time to go down and tell them and see Mackey, and he asked me if I would go down and tell them, and I went down and told them to keep away and not work there—that we were going to be blasting.

Q. That is, you told the Kenzie men?

A. Yes, and that he would see Mackey and they would come to some arrangement; that was on the 26th. [393]

Mr. SHACKLEFORD.—We move to strike all that testimony as incompetent, irrelevant and immaterial.

Motion denied. Defendant allowed an exception.

(Testimony of Al Black.)

Mr. SHACKLEFORD.—We ask the Court to take judicial notice, and to refer in the record to the complaint in Number 803-A filed August 25, 1910, particularly to the allegations contained in paragraph 3 of that complaint, together with the other proceedings in that case, showing it was followed up immediately with an application for an injunction to enjoin us from going on the premises, which injunction was denied.

By the COURT.—It is so ordered.

Q. You know where the Kenzie people afterwards constructed their dam across Gold Creek?

A. I do.

Q. Now, where were the Kenzie men working on this 26th day of September, the time you had these conversations, with respect to where they ultimately built the dam?

A. Well, they were just on this side of the creek—

Mr. SHACKLEFORD.—We make the same objection. Objection overruled. Defendant allowed an exception.

WITNESS.—(Continuing.) No, it was the other side of the creek, over here (indicating).

Q. Would their work be above their dam or below their dam, where it was finally constructed?

A. Well, they were taking it down—the timber—from the road down towards the dam, or trying to.

Q. Where were they taking the timber down with reference to any of the buildings of the Ebner Company up there?

A. You know where the compressor is?

(Testimony of Al Black.)

Q. Yes. [394]

A. It was below the compressor—taking it down over the Jualpa Company high line flume.

Q. Now, where were Middleton and the people under Mackey working with reference to where the Treadwell people afterwards put in this dam—not the Treadwell but Mr. Kenzie's people?

Same objection. Objection overruled. Defendant excepts.

A. There were other men working—there was Middleton and Graham and McKenna were working down there on the tunnel on the Parish #2 claim, and there was Seitz and John Carlson, they were working on the upper—above there—cutting out a line and brushing and cutting a trail.

Q. Where were they working with respect to this line that you say you helped to brush out as was referred to as the lower line of the Lotta claim—above that line or this side of that line, that is up or down the creek with respect to that line?

A. They were working on the line and they were working above and below—both—right along.

Q. Afterwards you went down there and told these men that were under Mr. Kenzie and Mr. Burch that you were going to keep up work—what did the boys working for you do and what did those working under Mr. Kenzie's management do?

Same objection. Objection overruled. Defendant allowed an exception.

A. Well, they went away.

Q. Who went away? A. Mr. Kenzie's crew.

(Testimony of Al Black.)

Q. And what did Middleton and Seitz and the rest of the boys with you continue to do?

A. They kept on working around there. [395]

Q. Now, then, for the next few days what work were you doing up there under Mackey?

Same objection. Objection overruled. Defendant allowed an exception.

A. I was looking out for the work there—I was over on the flume and down there looking out for things right along.

Q. Were you acting in some capacity as a superintendent of any work there during that time?

A. Yes, I was working as a boss.

Q. When you say you were working on the flume, what flume do you have reference to?

A. That is the high line flume.

Q. The high line flume of the Ebner people?

A. Yes, sir.

Q. Did you notice any of the people under Kenzie up there either on the Lotta or on the Parish #2 lode claims?

Same objection. Objection overruled. Defendant allowed an exception.

A. Well, they were there on the 26th and we ordered them off.

Q. You have been talking about the 26th—you ordered them off on the 26th? A. Yes.

Q. What other time?

A. I don't know whether they came back the next day—they didn't come back the next and the next day I think it was they came back again.



(Testimony of Al Black.)

Q. On the 28th?

A. And we ordered them off and got them off again—I ain't sure whether it was the next day or the day after.

Q. Was there any other time that they tried to make an entry again? [396]

Same objection. Objection overruled. Defendant allowed an exception.

A. Well, they came in there on the first of October.

Q. On the first of October?

A. On the first of October.

Q. What did you do then?

A. We ordered them off again.

Q. Was that Mr. Kenzie, Burch or Kennedy?

A. That was Kennedy and those Finlanders, I think it was.

Mr. SHACKLEFORD.—We object to that.

Objection overruled. Defendant excepts. Exception allowed.

Q. You know where the upper tunnel was commenced during that year on the Parish #2 claim, don't you?

Same objection. Objection overruled. Defendant allowed an exception.

A. Yes, sir.

Q. Do you know where the lower tunnel of the Parish #2 is? A. I do.

Q. That is the lower tunnel which is down near the flume that was afterwards built by the Kenzie people. Now, where with respect to these two last mentioned tunnels, was it that Mr. Kennedy and

(Testimony of Al Black.)

some of the defendant's people came there on the first of October?

Same objection. Objection overruled. Defendant allowed an exception.

A. It was between the two tunnels.

Q. Were you there yourself then?

A. Yes, I was.

Q. Who else was there of these people that were working for you?

A. There was Al Graham and Billy Moore and Adolph Myer, a man [397] named Reardon and a man named Gallagher.

Q. What were those people doing in and about these two tunnels you have just referred to and the Parish #2 lode claim?

Mr. SHACKLEFORD.—We object to any testimony along that line with reference to any work done on the property after the 27th day of July, 1910, for the reason that it appears from the pleadings in Case #803-A that the plaintiffs in this case have charged the defendants with entering upon the property prior to the 27th day of July, 1910, and remaining there continuously and wilfully and maliciously trespassing upon the property.

Objection overruled. Defendant allowed an exception.

A. McKenna and Graham were down on the lower tunnel and the others were clearing away where they started in the upper tunnel.

Q. How did you reach those tunnels and especially that upper tunnel on the Parish #2 lode claim from

(Testimony of Al Black.)

the boarding-house that these people were boarding at?

Same objection. Objection overruled. Defendant allowed an exception.

A. Most of them were boarding down town here, but they always went up to the works and then came down the old road on this side of the creek, they came down there part of the way and then they had a trail down; they had a rope then that led down into the creek, into the tunnel.

Q. Did you do any trail building that led from the upper part of the Ebner work, up from the boarding-house down to either one of these tunnels down on the Parish #2?

A. I didn't myself but I had some men there doing it.

Q. I mean your men? A. Yes, sir. [398]

Q. Who did you have working on that?

Same objection. Objection overruled. Defendant allowed an exception.

A. McKenna brushed out some and, I think, Graham did and Seitz.

Q. Billy Moore?

A. Billy did work a little but I don't think on that trail.

Q. Who, if anyone, was working in one of those tunnels on the Parish #2 when Kennedy came up or had you commenced the tunnel?

Same objection. Objection overruled. Defendant allowed an exception.

A. There was a tunnel—Al Graham and Mike

(Testimony of Al Black.)

McKenna were working in that tunnel.

Q. What conversation did you have with Kennedy, if any—Mr. Kennedy, who was assistant superintendent of the defendant company in this case?

Same objection. Objection overruled. Defendant allowed an exception.

A. Kennedy came up there to see me. He said, "Hullo, Al," and I said, "Hullo, Kennedy," and he said, "What are you doing here?" And I said, "I am going to work here," and he said that he wanted to have some understanding, he said, about blasting—he said, "When you blast here I want you to come down and tell my men how many shots you are going to fire, and then when you are through blasting come down and tell them it is all over or holler, 'All through,' " and I said, "I will do no such thing," and he said he would have me arrested, and I said, "You can't have me arrested; go and get the marshal." And then I told the men to go to work, and he went down below and he came back, and they brought a rock out and had it ready to roll down the hill, and I told the men to [399] holler, "Look out below," and Kennedy came running back and he said, "What did you holler 'fire' for and did not fire," and I said, "We didn't holler 'fire,' " and he said, "Yes, you did," and I said, "You are a liar." I said I hollered, "Look out below."

Q. Did the people under you continue their work?

Same objection. Objection overruled. Defendant allowed an exception.

A. Yes, sir.

(Testimony of Al Black.)

Q. What became of the people that were under Mr. Kennedy?

Same objection. Objection overruled. Defendant allowed an exception.

A. Well, they were working there and he went down and ordered them off. And he went back to where they had a tunnel and went to work down there.

Q. That is, down the creek? A. Yes, sir.

Q. (By the COURT.) On the Parish?

A. Yes, he went down at their tunnel which is on the Parish claim.

Q. (By the COURT.) Parish #2?

A. Yes, sir.

Q. Where is that tunnel with reference to the tunnel which they have commenced on the Colorado claim where the air-compressor is—is it above that or below it? A. It is above that.

Q. What, if anything, took place up there on the third of October?

Same objection. Objection overruled. Defendant allowed an exception.

A. Kenzie came up there with a crew of men and tried to put a [400] dam in, and we run them off or tried to run them off, but they came down here and had the marshal come up and he run us off.

Q. Did the marshal come up there to arrest any of your people?

A. He arrested me and two other fellows.

MR. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial.

(Testimony of Al Black.)

Objection overruled. Defendant allowed an exception.

Q. When Mr. Kenzie and his people went up there on the third of October, where did his people begin work with respect to where they ultimately built this dam of theirs?

Same objection. Objection overruled. Defendant allowed an exception.

A. They were working right there at the dam.

Q. What, if anything, did the Kenzie people do when they had your people arrested and brought down to Juneau and while you people were in the custody of the marshal?

Same objection. Objection overruled. Defendant allowed an exception.

A. They went up there that night and tried to put their dam in there and did put it in. I didn't see the dam, but the boys told me they had put it in the night before—I didn't see it. I was arrested on the night of the third and some one told me they had put it in.

Mr. SHACKLEFORD.—We move to strike that part of the answer.

By the COURT.—It will be stricken.

Q. Did you go back on the property on the fourth?

A. No.

Q. You didn't go back to work on the 4th?

A. No, I was down here in the courthouse on the 4th. [401]

Q. When did you go on the property after that preliminary trial was had down here before Grover Winn—when did you go back on the property?



(Testimony of Al Black.)

Same objection. Objection overruled. Defendant allowed an exception.

Q. Approximately—whether it was two or three or four or five or six days?

A. It was right after the trial. I think the trial took two or three days.

Q. After you went back up there did you see anything that the Kenzie people had been doing or what they had done with respect to endeavoring to put in the dam?

Same objection. Objection overruled. Defendant allowed an exception.

A. Yes; I saw where they put some rocks down and had a box there.

Q. Do you know a fellow up there by the name of Harry that was in the employ of Kenzie's people,—O. M. Harry?     A. I do.

Q. I will ask you if the Kenzie people, while you people were under arrest at that time, placed anybody on any portion and took possession of any portion of this high line flume line which you had been clearing out?

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial, and for the further reason that, as previously stated, they are estopped from claiming an entry at the date mentioned, for the reason of their prior allegation in 803, and he refers to work approximately at least half a mile from the property in dispute.

Objection overruled. Defendant allowed an exception. [402]

(Testimony of Al Black.)

A. Well, Harry went up there and put his tent up there on the third, the day we were arrested.

Mr. SHACKLEFORD.—We object to that—it has nothing whatever to do with the controversy in this case.

By the COURT.—You may cross-examine to show that at this time. There is nothing yet before the court to show where it is exactly.

Judge WINN.—I will admit, without any further examination, that this is on another piece of property belonging to the same company.

By the COURT.—Although these acts may constitute a series of acts explaining the others, I don't at present see the materiality of showing the fight for the possession of water on the other locations than the Lotta and Parish #2.

Judge WINN.—I was offering it for the purpose of showing the intent with which these people went on there.

By the COURT.—This interference with your diversion of water—I think you had better stick as closely as possible to the ground in controversy.

Mr. SHACKLEFORD.—I move to strike the testimony of the witness heretofore given with reference to that particular entry.

By the COURT.—You refer to the O. M. Harry episode?

Mr. SHACKLEFORD.—Yes, sir.

By the COURT.—It will be stricken.

To which ruling of the Court counsel for plaintiff excepts. Exception allowed.

(Testimony of Al Black.)

Q. Now, during this time and up to the third of October, at the time that you and Mackey and the rest of them were arrested, [403] about how many men had been up there, to work there under you or under you and Mr. Mackey both, in and upon this Ebner property?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial, and on the same grounds as previously stated that the parties to this case are committed to the date.

Objection overruled. Defendant allowed an exception.

A. Well, there was Graham and McKenna and Middleton and Seitz and Carlson, five men, and Hunsucker was down there off and on.

Q. You had approximately how many men that were working up there?

A. There was five—I think there was about five men right there, all along, after the 26th.

Q. That don't, of course, have any reference to the work that Hill and Wettrick were doing up there surveying? A. No; they were surveying.

Q. Now, after you went back up on this property, after this arrest and trial down here before Grover Winn, the result of which was that you people were bound over to appear before the grand jury, wasn't it—

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial.

Judge WINN.—I want to show that after they were bound over they went back up there and I want

(Testimony of Al Black.)

to show their acts afterwards.

By the COURT.—Get to the proposition directly.

Q. After your trial was over before Grover Winn or preliminary hearing, rather, had, did you then go back on this Eb— [404]

Same objection. Objection overruled and defendant allowed an exception.

A. I did.

Q. When you went back up there, what work, if any, were you engaged in for some little time after that?

Mr. SHACKLEFORD.—Same objection.

Objection overruled. Defendant allowed an exception.

A. Well, I was working on the flume grade.

Q. The high line flume? A. Yes.

Q. Who, if anyone, was doing any work either over on the Lotta or on the Parish Number 2 lode claim?

Same objection. Objection overruled. Defendant allowed an exception.

A. There was Reardon was there and Graham and McKenna and Middleton and Seitz and Carlson—I don't know whether Carlson was there or not; Seitz was there.

Q. You stated a while ago—when you started out and I asked you about what had been done up there on this property, you said something about some fences being built. I will ask you what fences were built up there that you had reference to.

(Testimony of Al Black.)

Mr. SHACKLEFORD.—What property are you referring to?

Judge WINN.—We will get down to it and see. I meant the fence down on the Lotta or Parish Number 2.

A. There was a fence built across the road there, where the road comes down to the compressor. Hunsucker put up a fence there.

Mr. SHACKLEFORD.—We object to that and move to strike as incompetent, irrelevant and immaterial. [405]

Mr. SHACKLEFORD.—And long after the date of entry.

The WITNESS.—This was before the 26th of September that he built the fence there.

Same objection. Objection overruled. Defendant allowed an exception.

Q. The exact date he built the fence there you don't know? A. I ain't sure about the date.

Q. That fence, as I understand, was built on what road? Describe that.

A. There is a road leading from the Basin road down a little by road, going down to the compressor building—it goes down part of the way and then there is a chute.

Q. The compressor building of the Ebner Gold Mining Co.? A. Yes, sir.

Q. That road is on which one of these claims, the Lotta or the Parish #2?

Same objection. Objection overruled. Defendant allowed an exception.

(Testimony of Al Black.)

A. On the Parish #2.

Q. Did you ever see any notice posted—I don't mean to ask you what the notice contained, but did you ever see any paper writing posted about where this fence was built across the road that you spoke of?

Same objection. Objection overruled. Defendant allowed an exception.

A. Yes, Hunsucker had a notice there—a notice there for trespassers to keep out.

Q. Now, I will ask you before any of Kenzie's people came up where you say they were on the third day of October, whether any of the people that were working under you were on the Lotta or the Parish #2 lode claim doing any work? [406]

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial, and not within the time laid for entry, and on the further ground that the witness has not shown that he has any personal knowledge of this matter.

Objection overruled. Defendant allowed an exception.

A. Yes, they started in to work on that—if I remember right, it was the 17th or the 18th or the 19th of September.

Q. They started in to work on the Lotta and the Parish #2? A. On the Parish #2.

Q. Do you remember who those men were that started in to work on the Parish #2 about the 18th or 19th of September?

Same objection. Objection overruled. Defend-



(Testimony of Al Black.)

ant allowed an exception.

A. The first day Hunsaker and Mike McKenna went down and the next day Graham went down.

Q. And what work were they doing upon this claim in a general way up to the third of October?

Same objection. Objection overruled. Defendant allowed an exception.

A. Well, Graham and McKenna were working in that lower tunnel.

Q. On the Parish #2?

Same objection. Objection overruled. Defendant allowed an exception.

A. Yes, sir.

Q. Now, on the third day of October, you haven't made it plain whether or not any of the people working under you or with you were on either the Lotta or the Parish #2 before any of Kenzie's people came up there and undertook to put in a dam?

Same objection. Objection overruled. Defendant allowed an exception. [407]

A. There were two men—there were four men; there were two in the Lotta tunnel and two above.

Judge WINN.—That is all.

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. When was it you went up on this property?

A. On the 11th of August.

Q. Was that before this dispute arose between the parties or after?

A. I don't know nothing about that.

Q. You don't know anything about any dispute?

(Testimony of Al Black.)

A. I know the dispute that we had afterwards, the dispute we had up there—that was afterwards.

Q. You knew, didn't you, that about the 25th of August Mr. Mackey's company started a suit in the name of the Ebner Company against the Alaska-Juneau for trying to build a water right?

A. Yes, I knew about that.

Q. That was shortly after you came up there?

A. Yes, sir.

Q. And while you were still on the upper end of the property, on this work here? A. Yes, sir.

Q. When did you go down on the Lotta and Parish claims? A. About the 18th of September.

Q. You don't want the Court to understand that up to that time you had no knowledge of the fact that the Alaska-Juneau people were working on a flume-line along Gold Creek from the Lotta claim on out toward the Colorado?

Judge WINN.—From the Lotta down?

Mr. SHACKLEFORD.—Yes. [408]

A. They were not working there then.

Q. They had not done any work?

A. Not then.

Q. They hadn't made any entry on the property?

A. They were down at Snowslide Gulch.

Q. You knew where the flume-line was going to be?

A. I did not, not at the time. I didn't know what they were going to do.

Q. Hadn't the slightest idea?

A. I seen a water notice there.

(Testimony of Al Black.)

Q. You saw a water notice there, and you knew that was the place where the intake was going to be?

A. Yes.

Q. And you were sent down for the purpose of blasting, to keep these people off of there, in their construction work, were you not?

A. We were there to keep them off, yes, sir.

Q. That is the reason that you and your crew went onto the Parish claim?

A. No; there were men working in the tunnel before any of the Treadwell people came there.

Q. You are speaking now of the entry made by Kenzie and Burch that you started out on your direct examination to speak about,—you are referring to that date, are you?

A. I am referring to when they went there—on the 18th, I think it was, the 18th of September, they went to work in that tunnel.

Q. And that is what they were sent there for?

A. No; they were sent to work then in the tunnel—they went down there to drive that tunnel in. [409]

Q. You were sent there for the purpose of keeping the other people off the ground?

A. Yes, when I went there.

Q. And so far as the time when these other men that went there ahead of you are concerned, you are making a statement to the Court about that—you didn't go there with these other men and don't know what their instructions were except by—

A. Which other men?

(Testimony of Al Black.)

Q. The men you say were there ahead of you.

A. I knew what the men were doing in the tunnel, yes.

Q. By conversation with them? A. Yes.

Q. Not by reason of any instructions yourself?

A. Yes, sir.

Q. I want you to understand this, that you are here for the purpose of telling what you saw and heard on the ground, not what you saw and heard from your confederates up there. Confine yourself to what you know and not what you have been told. Now, Mr. Black, you were sent there by instructions from Mr. Burton to blast on those people whenever they came there to work? A. I was not.

Q. You had instructions—you were advised by counsel to do that? A. I was not.

Q. Didn't you so state in your examination at the preliminary hearing?

A. I was not to blast on them people. I was to try to keep them away from there, but I had orders to try not to hurt anybody.

Q. But you were to blast so as to scare them,—is that the idea? [410] A. Yes, sir.

Q. And you are the same Al Black who was afterwards convicted in the case of the United States vs. Macky and others for that blasting?

A. The same one.

Q. And that was the reason that you went on the ground,—is that right? A. Yes.

Q. And you knew at that time a water location notice had been made and you knew that they were

(Testimony of Al Black.)

going to construct a flume way down the creek, didn't you,—is that right?     A. Yes, sir.

Q. I wish you would come here to this map and show me where this fence was that Hunsucker built, assuming that his point near the place marked "chute" is the road leading to the compressor—this is the road where it branches off, I suppose?

A. This fence was built across the road, right there.

Q. Right at the place where the road leading to the chute leaves the Basin road proper?

A. Yes, sir.

(By Judge WINN.)

Q. Mr. Shackelford asked you something about seeing a water notice that you thought was put up by some people under Mr. Kenzie. I will ask you where was that water notice posted on Gold Creek in reference to where the present dam is that has since been constructed by these defendants?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial. [411]

Objection overruled. Defendant allowed an exception.

A. I think we measured it—it was 130 feet from the compressor, the Ebner compressor building down the creek.

Q. About how far up the creek from where the present dam of the Treadwell people is, do you know?

Same objection. Objection overruled. Defendant allowed an exception.

(Testimony of Al Black.)

Judge WINN.—I mean the Alaska-Juneau Company.

A. It is quite a ways down—it is further down, a couple of hundred feet, maybe more—I couldn't say exactly.

Q. The dam is a couple of hundred feet down from where this first notice was put up?

A. Yes, sir.

Q. Now, he asked you about being advised by counsel in this matter—you were advised by counsel that you had a right to hold possession of the patented property up there so long as you didn't resort to any too much force to keep people off, were you not? A. Yes, sir.

Mr. SHACKLEFORD.—We move to strike the answer and object to the question as leading.

By the COURT.—It is answered. Objection overruled. Defendant allowed an exception.

Q. The same efforts you were making there at these dates you have referred to on the 22d and 23d, the efforts you were individually making, were for the purpose of keeping them off that property?

A. It was.

Q. These other people that were working there, Mr. Seitz and Billy More and Al Graham, you say that they were [412] working on the tunnel on the Parish #2, I believe? A. Yes.

Q. Now, then, that tunnel was finally run into what depth there, do you remember?

A. I guess the lower tunnel was in there about 30 or 35 feet when they started to work.



(Testimony of Al Black.)

Q. And then the upper tunnel—these people that you refer to as working under you, commenced that upper tunnel altogether?     A. Yes, sir.

Q. Do you know—have you been up there, and do you know as to what extent they did run that upper tunnel into the Lotta claim?

A. I was not there.

Q. You don't know?     A. No, I don't know.

Q. How much longer do you have personal knowledge of work having been done on that tunnel, on the Parish #2 claim, known as the upper tunnel—how much longer did our people continue to work on there in the summer of 1910?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. They were working there until along in November some time. I was not there then. I went down to Ketchikan, and they worked afterwards, after I came back, but I don't know how long.

(By Mr. SHACKLEFORD.)

Q. Whom were you employed by?

A. By Mr. Bent and Mr. Mackey. [413]

Q. What company?

A. The California & Nevada Copper Company, I believe it was.

Q. And under this advice of counsel to scare these people off you blasted from the hillside, above where they were working and the debris rolled down in the vicinity of where they were working?

(Testimony of Al Black.)

A. Yes.

Q. You were working for the California & Nevada Company all the time you have been testifying about?

Judge WINN.—We object as not the best evidence.

Objection overruled. Plaintiff allowed an exception.

A. Well, yes; we called it the Ebner Company.

Q. Whom were you hired by and paid by?

A. Mr. Mackey.

Q. He issued you pay checks? A. Yes, sir.

Q. What did they represent—was the name of the Ebner Company on there? A. No.

(By Judge WINN.)

Q. How were you paid off, with checks or money?

A. Checks.

Q. Give by Mr. Mackey?

A. Yes, sir; Mr. Mackey signed the checks.

Q. All you know about it was what you saw on the checks, and the people Mackey was working for—they were signed and made out in the way you say? A. Yes, sir.

Witness excused. [414]

**[Testimony of Lloyd G. Hill, for Plaintiff  
(Recalled).]**

LLOYD G. HILL recalled as a witness in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. I believe I asked you something concerning

(Testimony of Lloyd G. Hill.)

your having in the year of 1910 made a survey of some flume-line of the Ebner Company. I will ask you if you know where the high-line flume of the Ebner Company is, as it has been constructed?

A. I do; yes, sir.

Q. Did you have anything to do with the surveying or the laying out of the right of way for that high-line flume?

A. I surveyed the grade for it; yes, sir.

Q. When did you commence work, if you remember, upon making a survey of the right of way for this high-line flume?

Mr. HELLENTHAL.—We object as immaterial.

Objection overruled. Defendant allowed an exception.

A. I think it was the second or third day of August I started in on the preliminary work.

Q. Have you any record in your office by which you could testify—by which you could be positive of those dates?

A. I think my note-book will show; yes, sir.

Q. Do you know at this time whether it was the second or third?

A. It was either one of those two dates.

Q. Of August, 1910?      A. Of August, 1910.

Q. You know, Mr. Hill, where the tunnel is that is being driven by Mr. Mackey, commencing this side of Cape Horn?      A. I do, yes, sir.

Q. I believe it commenced on one of those Cape Horn claims—which one, do you remember?

A. On the Cape Horn #2 claim. [415]

(Testimony of Lloyd G. Hill.)

Q. You know where that tunnel is?

A. Yes, sir.

Q. What, if anything, did you have to do with the laying out and surveying of that tunnel?

Mr. SHACKLEFORD.—We object to any testimony with reference to surveying or reconnaissance work—it is evidently put in there for the purpose of strengthening their assessment work.

Judge WINN.—It is not put in for assessment work.

Objection overruled. Defendant allowed an exception.

A. Yes, I surveyed that also.

Q. When did you commence that? Would you say that followed along very soon after?

A. Well, it was taken up while the survey of the flume was being made?

Q. You know Al Black, the witness who has just testified? A. I do.

Q. Do you remember when Al Black first went to work up there in the summer of 1910?

A. Sometime in August. I wouldn't be certain—about the middle of August—I wouldn't be certain about the date.

Q. Do you know where he commenced work?

A. Back at that time commenced work on the grading out, laying out, the grade of the flume-line, the high-line flume, which I had surveyed.

Q. Where on that grade did he commence work?

A. He commenced work at the Ebner dam—that would be on the Golden Fleece claim, on the north

(Testimony of Lloyd G. Hill.)

side of the creek.

Q. Approximately how long a time were you engaged in laying out this flume-line and surveying on this tunnel? [416]

A. Well, that and in connection with the other work we were doing, we were engaged practically all of August and September and October, with slight intermissions.

Q. What was Mr. Mackey and his people doing up there during this time, generally?

A. They were excavating for the mill grade on the Cape Horn #2—they were cutting out the grade.

Mr. HELLENTHAL.—We object to that as immaterial.

Objection overruled. Defendant allowed an exception.

WITNESS.—(Continuing.) They were cutting out the grade for the high-line flume; they were constructing a high-line flume—they were driving tunnels on the Parish #2; they had two places they were doing excavation work on the surface and doing all those things that are necessary to start a mine and put it in working condition.

Q. I will ask you if you know what length of tunnel was driven down on the Parish #2 in 1910?

Mr. SHACKLEFORD.—We object to any testimony with reference to work done on the Parish #2 in 1910 until it is made apparent that the work was done prior to the location of the claim in question and prior to the location of the water right.

(Testimony of Lloyd G. Hill.)

Objection overruled. Defendant allowed an exception.

A. I should think approximately 18 feet.

Q. Do you mean 18 feet— A. In both tunnels.

Q. In the upper and the lower tunnel?

A. Yes, sir.

Q. (By the COURT.) Do you mean 18 feet in each tunnel or both tunnels? [417]

A. That would mean 18 feet in both tunnels.

Q. Did you aid Mr. Wettrick afterwards in making a survey of the Parish #2 for patent during that year? A. I did, yes, sir.

Mr. SHACKLEFORD.—I move to strike the last answer of the witness as incompetent, irrelevant and immaterial and not within any of the issues in the case.

Motion denied. Defendant allowed an exception.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Whom did you go to work under when you started to run that survey of the high line flume,—that is after Mr. Tripp had severed his connection with the California & Nevada Company, wasn't it?

A. No, the first time I went up there, Tripp was along, I think, with Bent, Mackey and I and several others.

Q. Who hired you? A. Why, Mr. George Bent.

Q. George Bent was superintendent of the California & Nevada Company when he hired you?

A. I didn't know at that time a thing about who



(Testimony of Lloyd G. Hill.)

he represented or anything about it.

Q. You know, however—you have learned since—that he was acting as superintendent of the California & Nevada Company?

Judge WINN.—I object to that as incompetent, irrelevant and immaterial. It appears clearly in this case if the California & Nevada Copper Company or any other company in the world did anything on there, they were stockholders in the Ebner Gold Mining Company. [418]

Objection overruled. Plaintiff allowed an exception.

Q. You learned afterwards that Mr. Bent was the superintendent of the California & Nevada Mining Company and was hiring you as such when you went to work there—is that not true?

A. No; to this day I don't know who Mr. Bent really represents.

Q. You don't know really who he represents?

A. No.

Q. Have you rendered him any bills?

A. Yes, sir, I have.

Q. How have you made those bills out?

A. I have drawn those bills to the California & Nevada Copper Company.

Q. Did you receive any pay?      A. I did.

Q. How were you paid?

A. I was paid by the California & Nevada Copper Company.

Q. You were paid by the California & Nevada Copper Company?      A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Q. By their check, signed with their name?

A. Yes, sir.

Judge WINN.—It is understood that our objection goes to all of this testimony and we are allowed an exception?

By the COURT.—It is so understood.

Q. All this work that you have testified to, all this surveying, and all these other things you have done here that you have been testifying about, are all included within the bills that you have rendered to the California & Nevada Company, for which the California & Nevada Company paid you? A. Yes, sir.

Q. You know that Mr. Bent is superintendent of the California & Nevada Company, don't you?

[419]

A. No, sir; I knew that he and Ebner were very close together, and I always thought he was looking after Ebner's interests. In other words, I didn't know what connection Bent and Ebner and the California & Nevada Copper Company really had.

Q. You don't know that?

A. No, I do not, positively.

Q. Anyhow Bent, whoever he was, hired you to do this work? A. Yes, sir.

Q. And you rendered your bills to the California & Nevada Mining Company and were paid by that company? A. I did.

Q. That includes all the work to which you have testified?

A. That includes all the work to which I have testified.

(Testimony of Lloyd G. Hill.)

Q. And Tripp didn't hire you to do the work?

A. No, Tripp didn't hire me.

Q. The employment next after Mr. Tripp ceased to be superintendent and Bent had taken his place,—how about that?

A. I didn't know about that; they were all here together and I didn't know when Tripp severed his connection with the company. They were all together, but Bent made the arrangements for my work.

Q. It was about the 2d and 3d of August?

A. The arrangements were made on the first of August, I think—I think I went up on the first of August and surveyed a millsite—looked over the ground for a millsite.

Q. That was done on the first of August?

A. Yes, sir.

Q. And the surveying you did on the first of August was a millsite lower down the creek?

A. Yes. [420]

Q. And later on, about the second or third, Mr. Bent in the presence of Mr. Tripp made an arrangement with you to survey the tunnel line?

A. No, sir; that arrangement was made in the Occidental Hotel, alone, between Bent and I.

Q. Tripp was not there? A. No.

Q. That was after you had done the surveying on the millsite? A. Yes sir.

Q. Who was present in the Occidental Hotel when the arrangement was made?

A. That was made between Bent and I—I don't

(Testimony of Lloyd G. Hill.)

think there was anybody present.

Q. When you made the arrangement for the survey of the millsite was Tripp and Bent both there?

A. No, sir.

Q. That was made with Tripp?

A. No, I didn't know Mr. Tripp in connection with any of the surveys at all.

Q. The only man you dealt with was Bent?

A. The only man I dealt with was Bent and subsequently Mackey, after Bent left.

Q. Now, I want to ask you a question that is not probably cross-examination, as far as this particular examination is concerned, but I ask leave of the Court to ask this one question with reference to this matter. The road leading from the public road to the compressor-house is delineated on this map?

A. Which road do you refer to?

Q. The road leading from the Basin road to the compressor-house. [421] A. Yes, I think it is.

Q. Where is that?

A. The road on the Parish #2, leading from the Basin road down to the point marked "chute."

Q. Now, along about the middle of August you commenced surveying—on about the third of August you saw and surveyed that flume-line?

A. Yes; I commenced on the second or third.

Q. And after you had surveyed the flume-line along about the middle of August, Mr. Black commenced to brush out the line along the line you had previously surveyed?

A. I don't know just when Black went up, but

(Testimony of Lloyd G. Hill.)

whenever he did, he started at that time to cut off the brush, blast out the rock and make a foundation for the bottom of the flume.

Q. He commenced the actual work of constructing a grade for the flume; is that right?

A. Yes, sir.

Q. Whenever that was—along the middle of August, you wouldn't say the exact date?

A. Yes, sir.

Q. Commenced at the upper end, near the Crown Point? A. Yes, sir.

Mr. HELLENTHAL.—That is all.

Witness excused. [422]

**[Testimony of Angus Mackey, for Plaintiff.]**

ANGUS MACKEY, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. What is your business, trade or profession?

A. Constructing engineer.

Q. How long have you been engaged in that business, approximately?

A. Over thirty years, or forty years, perhaps.

Q. How long have you been engaged in that business in Alaska?

A. Off and on since 1893—I have been off to other different countries since then.

Q. What work in that line generally have you done in Alaska, in what companies?

A. The Alaska Treadwell, the Alaska Mexican and

(Testimony of Angus Mackey.)

the Alaska United.

Q. When did you come to Alaska, that is, approximately—what time did you come here, in 1910?

A. I came up here first in August.

Q. By whom were you sent here?

A. By F. L. Underwood, of New York.

Q. Did you know at that time whether or not he had an option on the stock of the Ebner Gold Mining Company?

A. That part I don't know anything about at all.

Q. When you came here in 1910, who of the parties that were interested with you in the undertaking which you were about to commence on this Ebner property were here in Juneau?

A. There were several gentlemen from the east,—Mr. O'Boyle, Briggs and Professor Enright and George E. Bent.

Q. You knew at that time generally about this Ebner property up the Basin here, did you not?  
[423] A. I did.

Q. You had been in Alaska also for some years working for the Treadwell Company and building mills over there and I will ask you if you had prior to 1910 been upon the Ebner property? A. I had.

Q. What work generally did you commence doing on this property in 1910 when you came here?

A. Well, first I started on the flume and built a flume from the Ebner dam to bring water down to the mill we were going to build in Shady Bend.

Q. That is the same flume that you heard Mr. Hill speak of a while ago on the witness-stand, is it?



(Testimony of Angus Mackey.)

A. It is.

Q. In 1910, approximately what work did you do in the way of the construction of that high line flume over this grade that Hill testified he had surveyed out, I mean approximately?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. We built the flume about four thousand feet in length.

Q. About how many feet?

A. About four thousand.

Q. In 1910? A. Yes, sir.

Q. Did you have it built that far up in the latter part of December last year?

A. Yes, nearly completed.

Q. What are the dimensions of that flume?

A. It is four feet wide and three feet high.

Q. Do you remember approximately how much it cost to build it? [424]

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. About \$9,000, approximately.

Q. Approximately \$9,000? A. Yes.

Q. Now, you know, Mr. Mackey, what has been pointed out to you to be the Parish #2 lode claim up there, do you not? A. I do.

Q. I will ask you what work, if any, during 1910,

(Testimony of Angus Mackey.)

you had done on the Parish #2 lode claim—just give me the approximate amount of work.

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial, no proper foundation having been laid, and on the further ground that under the assessment act statute the Parish became forfeited upon the failure to perform the work in 1909.

Objection overruled. Defendant allowed an exception.

A. We did work on two tunnels, considerable work, on the Parish #2, sufficient to get a patent and it was surveyed for patent, an official survey was made.

Q. What, if anything, in 1910 did you do on what is referred to on this exhibit “N” as the Ebner mine tunnel?

Same objection. Objection overruled. Defendant allowed an exception.

A. We faced up for a new tunnel there and got the tunnel started.

Q. Approximately, how much did you spend on that tunnel in the year 1910?

A. \$590, approximately. [425]

Q. Do you remember the date that Mr. Tripp turned over these premises up there, the day he quit and you commenced?

A. No, I don't remember the exact date. It was when those parties were out from New York.

Q. You heard Mr. Black testify in this case?

A. Yes, sir.

Q. Did you employ him to go up there, you and Mr.

(Testimony of Angus Mackey.)

Bent? A. Yes, sir.

Q. Do you know anything about Mr. Hill having made any survey for a flume-line or for a tunnel right during that season?

A. I do. Mr. Bent informed me that he engaged—  
Objected to. Objection sustained.

Q. Did you see Mr. Hill at work up there?

A. I did.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

Q. Who was working with Mr. Hill?

Same objection. Objection overruled. Defendant allowed an exception.

A. I believe Mr. Wettrick, his partner.

Q. Now, from the time you commenced there—did you say approximately what time you commenced,—was it July or August? A. In August.

Q. Had you taken charge of affairs up there at the time that Al Black went to work?

A. Well, yes; at that time I would state I was in Seattle, getting out the framework for the 200-stamp mill.

Q. What was done with reference to building a mill up there, generally, in the year 1910? [426]

Objected to as immaterial. Objection overruled. Defendant allowed an exception.

A. I got out the frame work for the 200-stamp mill and about three-quarters of the grade was finished for the mill.

(Testimony of Angus Mackey.)

Q. About three-quarters of the grade for the mill?

A. Yes, sir.

Q. On the millsite? A. Yes, sir.

Q. Did you have any machinery shipped up here looking toward the erection of this 200-stamp mill?

A. We had.

Q. In a general way, what machinery did you have shipped?

A. There was the foundation building and some mortars here and some other machinery, I believe, is at Seattle—it stopped there because we couldn't get it forward far enough last fall.

Q. Do you know approximately how much money was paid out in the year 1910 on the timbers, etc., for this mill?

Same objection. Objection overruled. Defendant allowed an exception.

Q. Leaving out the question of the machinery?

A. Approximately at this end \$35,000.

Q. How much about on the machinery or does that include the machinery?

Same objection. Objection overruled. Defendant allowed an exception.

A. No, that didn't include the machinery; probably \$20,000 paid out,—approximately \$20,000 for that.

Mr. HELLENTHAL.—I should like to know if this witness is testifying from his own knowledge.

Q. I asked you how much you know about, how much you know of, [427] was paid out. You said at this end of the line approximately \$35,000—do you

(Testimony of Angus Mackey.)

know?     A. Yes, I know.

Q. Now, did you say how much on the mill? You gave that separately?

A. One-fifth of the purchase price; as a general rule, it is  $\frac{1}{3}$  or  $\frac{1}{5}$  has to go with the purchase price of the machinery, always.

Q. You gave the separate amounts there, as I understand it—one amount was paid out on the mill and timbers and the other amount was paid on the machinery?

A. On the machinery, yes, in New York.

Q. You segregated it?     A. Yes, sir.

Q. What was this flume that you constructed, constructed for?

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. It was built to furnish water for power for the 200-stamp mill and compressor plant or any other machinery we would be liable to use in connection with the mining and milling.

Q. As I understand, then, the flume was built for the purpose of conveying water to generate power to open up, develop and mine this property?

A. It was—the Ebner property.

Q. This exhibit “N”—have you looked at it, Plaintiff’s Exhibit “N”?     A. Yes.

Q. The mill that you speak of is indicated on this by the following words, “Proposed 200-stamp mill.” Is that the mill you [428] have reference to?

(Testimony of Angus Mackey.)

A. Yes, sir.

Q. What tunnel is that you say you did work on during the year 1910?

A. That is the main tunnel. It is to be the main working tunnel to strike the ore body under the present workings of the Ebner mine.

Q. It is the tunnel represented on this exhibit "N" as the Ebner mine tunnel?

A. Yes, sir; that is the new tunnel of the Ebner mine.

Q. You are still at work on that tunnel?

A. Still at work on it; yes.

Q. Approximately how far has it been driven in? Same objection. Objection overruled. Defendant allowed an exception.

A. Approximately 450 feet.

Q. To what extent do you expect to drive that tunnel?

Same objection. Objection overruled. Defendant allowed an exception.

A. I think the surveyor made it about 2,800 feet that we would have to drive.

Q. How is this mill that you propose to build and as indicated on this exhibit "N"—this proposed 200-stamp mill—how is it being built with respect to altitude? Is it at a lower or higher point than the Parish, Lotta and Taku and those other mining claims up there?

Objected to as incompetent, irrelevant and immaterial.



(Testimony of Angus Mackey.)

Objection overruled. Defendant allowed an exception.

A. It is lower.

Q. Is this millsite that I have just spoken to you about the site you testified concerning, having been graded by you? [429]

Same objection. Objection overruled. Defendant allowed an exception.

A. Yes, sir.

Q. About how much money did you expend on the grading of that millsite in the year 1910?

Same objection. Objection overruled. Defendant allowed an exception.

A. Approximately \$4,800 on the mill grade.

Q. Now, Mr. Mackey, do you know anything about the advent of the defendant company's people upon any of this property in 1910, about their going upon any of it? A. How is that?

Q. Do you know anything about any of the people representing the defendant company, the Alaska-Juneau Gold Mining Company, making an effort or getting on to any of this property during the summer of 1910? A. I do.

Q. You know Mr. Kenzie? A. I do.

Q. You have known him for several years, have you not? A. Yes.

Q. Did you have any conversation with Mr. Kenzie, as representing the defendant company in this case, about their going upon the Parish Number 2 lode claim and the Lotta claim during that year?

A. I did.

(Testimony of Angus Mackey.)

Q. About what time and where did that conversation take place?

A. About the latter end of September, on the Basin road.

Q. The latter part of September, upon the road that leads from here up to the mine? A. Yes, sir.

[430]

Q. What was that conversation?

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial and not proper evidence. If it is introduced for the purpose of showing entry at that time, not conforming to the admissions in 803-A.

Objection overruled. Defendant allowed an exception.

Q. Go ahead, Mr. Mackey.

A. Mr. Kenzie met me and wanted to make an agreement to notify each other about the time we would blast, but I refused to do so, considering them jumpers on our property.

Mr. SHACKLEFORD.—We move to strike the last part of the answer as not responsive to the question.

Motion granted. Stricken.

Q. Now, just state the whole conversation—whether Mr. Kenzie caught up with you on the road or you caught up with him and what was the conversation about. Had there been any rupture between your people and his people before that time?

A. Not as I know. Well, I believe there was a suit brought here, but I wasn't here at the time the suit was brought.

(Testimony of Angus Mackey.)

Q. What did you and Mr. Kenzie talk about? Is that all you said—have you repeated the full conversation?

A. No, I refused to comply because I didn't consider—for the reason that I didn't consider that I had any right to.

Q. Did you tell him that?

A. I told him that I understood he was a bluffer and was bluffing the whole country, but couldn't bluff me, not for a little minute.

Q. I want the whole conversation you had with him—now, when you had that conversation you were talking about work that your people were doing on what claims? [431]

A. On the Parish and Lotta.

Q. On the Parish #2?

A. On the Parish #2.

Q. And the Lotta? A. Yes, sir.

Q. Was that all the conversation you had with Mr. Kenzie?

A. I told him, I think, that I didn't propose to hurt anybody, I didn't want to hurt anybody, and the only thing I would do was to notify them when we were going to blast, which we always did.

Q. Then, I understand, was it or was it not, that the agreement he wanted you to enter into was to allow his people to go ahead and work on these claims and you work too?

Objected to as leading. Objection sustained.

Q. What work was it that Mr. Kenzie was talking about that he wanted to do so that you could give him

(Testimony of Angus Mackey.)

notice of blasting, etc.?

Mr. SHACKLEFORD.—We object to the question as leading and argumentative and calling for a conclusion.

Objection overruled. Defendant allowed an exception.

Q. What work was it that Mr. Kenzie was trying to do at that time and what work were you doing that he wanted some compromise measure entered into about the time of blasting and firing?

A. He wanted to build a dam across the Lotta patented claim to divert the water.

Mr. SHACKLEFORD.—We move to strike the answer as stating a conclusion.

By the COURT.—The question was what they were doing and I take it the answer, although not direct, is an answer to that question. Objection overruled.

Defendant allowed an exception to the ruling.  
[432]

Q. Up to this time that you had this conversation with Mr. Kenzie, had they done any work on the Lotta claim, had Mr. Kenzie's people done any work on the Lotta claim?

A. No, I don't think they had, except getting down some logs and so on, but I suppose it was to be used to throw a temporary dam across the creek.

Q. Were you present, Mr. Mackey, during any of this controversy that took place between the Ebner people and the Kenzie people on the third of October?

A. No, I was not.

(Testimony of Angus Mackey.)

Q. You were one of the parties that was arrested for something that took place up there that day?

A. I was.

Q. You and the other parties had a preliminary hearing down here before Grover Winn, United States Commissioner?     A. Yes, sir.

Q. Do you remember approximately how many days you took up in that preliminary examination before the Commissioner?

Objected to as incompetent, irrelevant and immaterial.

Judge WINN.—It is preliminary.

Objection overruled. Defendant allowed an exception.

A. We were there two or three days, anyhow, I think, down here.

Q. Do you know anything of the people under Mr. Kenzie, what they did or what structures—what they put upon either the Lotta or the Parish #2 lode claim while you were,—while you people were down here under arrest and attending that preliminary hearing?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. As soon as we were arrested they started in to throw a dam [433] across there, that very night.

Mr. HELLENTHAL.—We move to strike that—he is not testifying to what he saw.

By the COURT.—It does not so show as yet—it

(Testimony of Angus Mackey.)

may be true. You may cross-examine.

(By Mr. HELLENTHAL.)

Q. You didn't see anybody construct that dam, did you? A. That night?

Q. Yes.

A. Well, hardly—I see that the work was done.

Q. Were you there when the work was done?

A. It surely didn't get built itself, surely.

Q. I ask you if you saw the work done.

A. I told you I did.

Q. You did see them do the work?

A. I said I saw the work had been done.

Q. You saw the work after it had been done?

A. That the work had been done; yes, sir.

Q. But you didn't see anybody do the work?

A. I think I answered the question.

Q. Did you see this work done?

By the COURT.—He said he did not.

Mr. HELLENTHAL.—Then I move to strike.

By the COURT.—The first answer will be stricken but the testimony of the witness regarding work of this kind being done during that night will stand.

Defendant allowed an exception to the ruling of the Court.

(By Judge WINN.)

Q. How long was it after you were brought down here by the marshal [434] before you got back on the property up there?

A. Oh, it was several days—I couldn't state exactly.

Q. When you got back, did you notice anything



(Testimony of Angus Mackey.)

that the people under Mr. Kenzie had been doing down there in relation to building that dam across the creek on the Lotta claim?

A. Yes; they had throwed some rocks across there and put up a temporary dam.

Q. Had a little piece of flume in?

A. Had a box in there.

Q. Do you remember Mr. Burch, the man who was up here somewhat looking after that work for the Alaska-Juneau Company?     A. I do.

Q. Do you remember Mr. Burch having testified upon the witness-stand upon some of those hearings—he went upon the witness-stand, did he not?

A. Yes, sir.

Q. Do you remember his having testified that his people—meaning the Alaska-Juneau Gold Mining Company, the defendant in this case—that they did go down there that night and put in a part of that dam and got what he considered a diversion of the water?     A. Yes.

Q. And that this was done while you people were under arrest—you heard Burch testify to that?

A. While, we were under arrest.

Mr. SHACKLEFORD.—I understand you to claim that these people were detained in jail all night.

Judge WINN.—They were in the custody of the marshal.

Q. You didn't go to jail?

A. I didn't go to jail. [435]

Q. Will you name the people that were arrested up there by a warrant sworn out by Mr. Kenzie—you

(Testimony of Angus Mackey.)

remember the number of people that were arrested?

Objected to as not the best evidence. Objection sustained.

Q. I will ask you this question, if it is not a fact that all the men that you had working over there on the Lotta and Parish #2, that the defendant company claimed were interfering with their work, if they did not have every man in sight arrested and brought down here?

Objected to as leading. Objection sustained.

Q. Who were arrested with you and brought down with you—can you give me the number of men and their names?

Objected to—

By the COURT.—The objection will be overruled—if they were arrested in his presence and brought down.

A. They were not arrested in my presence.

Q. Did they come down with you in charge of the marshal?

A. No, I came down first—they were arrested upon the ground and the marshal served papers on me down at my residence.

Q. This work of going on the Ebner Gold Mining Company's property and all the work that was being done there except the work that was being done under this defendant company, was being done under your supervision, was it not? A. It was.

Q. I will ask you whether or not the party who made the complaint against you in Grover Winn's

(Testimony of Al Black.)

court also asked that you be bound over to keep the peace?

Objected to as not the best evidence. Objection sustained.

Judge WINN.—I am doing this to show the methods the defendant company used and the apprehension which Mr. Mackey, who was [436] at the head of this work, was working under when these people went in there and kept by degrees forcing their way in and upon the property until they got the flume constructed clear across the Parish Number 2 claim.

Objection sustained. To which ruling of the Court counsel for plaintiff is allowed an exception.

Whereupon court took a recess until 2 P. M.

Afternoon Session.

Judge WINN.—I desire to withdraw Mr. Mackay for a moment and recall Mr. Black.

By the COURT.—Very well. [437]

**[Testimony of Al Black, for Plaintiff (Recalled).]**

AL BLACK, recalled by the plaintiff for further redirect examination.

(By Judge WINN.)

Q. When you were arrested up there on the third of October and brought down to Juneau, I will ask you whether anyone was arrested along with you at the same time and brought down with you when you came.

Same objection. Objection overruled. Defendant allowed an exception.

A. There was Mr. Hunsucker and Mr. Seitz.

(Testimony of Al Black.)

Q. Mr. Macker didn't come down at the same time?

A. No; he was down here, I guess.

Q. Now, I will ask you, when this arrest was made up there on the third, as to whether or not the marshal did or did not arrest everybody that was in sight and at work up there on the Lotta and Parish claims.

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

Q. On the third, at the time the marshal came up there with his deputy, do you know whom he was accompanied by, whether there was anyone with the deputy marshals or marshal—do you know Mr. Burch? A. Yes, Mr. Burch was along.

Q. I will ask you how many men there were working on the Lotta and the Parish #2 at those places you described in your evidence this morning on the right-hand side of the creek as you go up when the marshal came up there and made the arrest?

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial, and on the further ground that it carries two [438] questions and suggests an answer to the witness.

Q. Well, I will ask you whether or not these men were working on the Lotta and Parish claims up there?

Objected to as leading. Objection sustained.

Q. About the question of working on both claims I will leave that out. I will ask you, Mr. Black, who was up there the day that the arrest was made on the third of October, the time you were arrested. Name

(Testimony of Al Black.)

the men that were working over on the workings you described in your evidence this morning, over on the Parish or Lotta, or the Lotta and Parish both together.

Same objection. Objection overruled. Defendant allowed an exception.

A. Well, there was some of them there was new men, I don't just know their names but there was—I knew Al Graham was there, Reardon was there, Adolph Myer, Billy Moore and Ed Seitz was there.

Q. Now, I will ask you if they were there in sight upon this work at the time the arrests were made of you and Hunsucker and Seitz—these other men, were they there or what had become of them?

A. Well, I was arrested up at the boarding-house and Seitz was there at the boarding-house and Hunsucker, I ain't sure whether they found him down there on the works or on the trail coming from the works.

Q. I thought you said you were all arrested at the same place. Then you were not down there at the works at the time the other parties were arrested over at the—you were at the boarding-house?

A. I was at the boarding-house when the marshal and Burch came over. [439]

Q. But you three people did come down to Juneau together, you and Sietz and Hunsucker?

A. Seitz and I came down together and Hunsucker came later on and the marshal and Mr. Burch, they went down the other way looking for some more men, but he couldn't find them—it was getting late.

(Testimony of Al Black.)

Mr. HELLENTHAL.—We ask to strike that—

By the COURT.—The latter part of the answer will be stricken as not responsive to the question.

Q. Then, I will ask you if the marshal or his deputy and Mr. Burch were making search for any other men there at the time you came down and I left.

A. They were.

By Mr. HELLENTHAL.—We object to that question.

By the COURT.—It is answered—you may cross-examine on it and if it develops he did not have some knowledge on the subject it will be stricken.

(By Mr. HELLENTHAL.)

Q. I understand that the marshal came up there and notified you and Graham and Seitz that you were under arrest?

A. No, not Graham—he notified—I was alone there and he had my name and he had Seitz's name and Hunsucker's and Mackey—then he asked me about some fellows—name of Doe and Hoe and one thing and another, and I told him there was no men of that name there.

Q. He asked you who else was up there at the time those blasts were fired, didn't he?

A. No, he did not.

Q. He didn't ask that?      A. I don't think so.

[440]

Q. That is what you understood him to be after?

A. Yes.

Q. To find out who the other men were?

A. Yes.



(Testimony of Al Black.)

Q. That were there when the blast was fired?

A. The men that were working there, I suppose, is what he wanted.

Q. Then you and Graham and Seitz went down town alone—you didn't go in the custody of the marshal.

A. Yes; he went down and I told him I would go on down and he said he would wait at the bridge, and he came down the other flume, you see, and when we got down he was there at the bridge.

Q. And you gave bail when you got down here?

A. Well, they had us here until about 9 o'clock.

Q. You didn't get here until shortly before 9?

A. Yes, we were down here just a little after dark.

Q. That time of the year what time does it get dark? A. October. It gets dark pretty early.

Q. That was October? A. The third of October.

Q. You had had your dinner at the mine when he found you? A. Yes, sir.

Q. And you came down here and were released about 9 o'clock?

A. I wouldn't say it was 9. It was along in the evening. I knew it was before I had my supper.

Q. Where were you—take a look at this plat here. There is the Lotta lode and there is the house that you were testifying about. Where were you with reference to that property? At what place were you blasting from?

A. There, somewhere—probably above this dam (indicating).

Q. Just mark it. [441] A. I couldn't mark it.

(Testimony of Al Black.)

Q. Just above the dam, about the place where "1888" is?

A. It was somewhere in there (indicating)—between that and where it says "Alaska-Juneau" here.

Q. It was on the Lotta lode? A. Yes, sir.

Q. And it was while they were working, not where the present dam is, but where the original point of diversion was?

A. When he arrested me I was up here (indicating).

Q. I am talking about when the shots were fired which caused the arrest?

A. It was up here (indicating).

Q. Near the figures "1888"?

A. Well, somewheres along here—I wouldn't say just exactly.

Q. It was on the Lotta lode?

A. It was on the Lotta lode; yes, sir.

Q. What were you doing when you fired the blast—what sort of work were you engaged in?

A. Well, they were blasting—they were rolling down rocks.

Q. You were on that sidehill there?

A. Yes, sir.

Q. Were you driving a tunnel?

A. It was on the Lotta—no, we were not driving a tunnel on the Lotta—we had a little open cut there.  
(By Judge WINN.)

Q. Where were you driving a tunnel? Were you doing anything on the Parish #2 at that time?

Objected to as leading.

(Testimony of Al Black.)

Q. Were you doing anything or not doing anything on the Parish #2?

Objected to. [442]

By the COURT.—Ask him if he knows on what claim they were working.

Q. Were you doing any other work, on any other claim near the Lotta there, at the time that these arrests were made on the third of October?

A. There was men working on the Parish #2—Al Graham and Mike McKenna. Mike McKenna was alone there in the afternoon, in the lower tunnel.

Judge WINN.—That is all.

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. The lower tunnel? A. Of the Parish #2.

Q. Come here and show me where that was.

A. Here it is—it is just above the creek.

Q. The place marked “tunnel,” between the line marked Alaska-Juneau flume and Gold Creek?

A. Yes.

Q. Were you working down there?

A. No, I was not.

Q. But you know about their being down there from what they told you?

A. No, I know they were down there, because I sent the men down there.

Q. Were they blasting or rolling any rock?

A. No, they were working in the tunnel. Graham was there on the third and so was McKenna.

Q. There were only three people arrested around there besides Mackey? A. Yes.

(Testimony of Al Black.)

Q. Were there ever any more arrests made?

[443] A. There was arrests made afterwards.

Q. I mean at that time? A. Four, was all.

Q. It was some weeks before any further arrests were made?

A. I was down at Ketchikan. I don't know much about that.

Q. You don't know about the subsequent arrests?

A. I heard about it.

Q. Personally, you were not there and couldn't testify? A. No.

Q. How many men did that leave on the property—with three of you and Mackey gone, how many men did that leave on the Ebner property?

Judge WINN.—I object to that. We were confining ourselves to the Lotta and Parish.

Objection overruled. Plaintiff allowed an exception.

A. I couldn't say exactly how many. There were some men over there. I told them to go away and hide when the marshal came.

Q. How many men did it leave on the property?

Judge WINN.—You mean the entire property?

Mr. SHACKLEFORD.—On the Ebner property, as you call it.

Judge WINN.—That includes the high line flume and everything. I object to it if it does.

Q. How many men were working up on the Ebner mine on that day? A. There was about fifteen.

Q. How many on this job that you described as blasting rocks down toward the creek?

(Testimony of Al Black.)

A. Well, there was some went home and there were some up there—we were arrested along in the evening, just about dark.

Q. About dinner-time?      A. About dark.

Q. And how many men did you have working with you on the Lotta [444] lode survey 87, near the point marked 1888 on the map?

A. There were eight or ten men there.

Q. And out of that eight or ten men, you were the only one arrested?      A. No.

Q. Who else was arrested?

A. There was Ed Seitz and Hunsucker.

Q. Graham was not arrested.

A. No; Al Graham was not arrested.

Q. Three out of eight or ten men?

A. Mackey was arrested too.

Q. He was not working there?

A. He was not working there.

Q. And he was not there at the time the shots were fired?      A. Not that I know of.

Q. (By Judge WINN.) What became of these other men and why was it the marshal didn't find them?

Objected to. Objection overruled. Defendant allowed an exception.

A. I told them to get in the brush or get out of sight, that the marshal was coming.

Witness excused. [445]

Judge WINN.—I desire to offer in evidence and read into the record a copy of the complaint upon which Mackey, Black, Seitz and Hunsucker were ar-

(Testimony of Al Black.)

rested, the original complaint—I desire to read it into the record. I desire to do it for the purpose I have indicated, to show to the Court that both the complaint itself—it is verified by Mr. Kenzie—and the warrants that were issued thereon recite the fact that Burch was to accompany the marshal and point out to him the John Does mentioned in the complaint and in the warrant. I desire to show that they went up there with this warrant and arrested everybody on the Lotta claim and the Parish #2. It is true that there were some others there that day and had been working there that day, but we will show how they got out of it and why they were not arrested; and I also desire to offer the warrant to show the action under which these people sought to take possession of the property.

Mr. SHACKLEFORD.—I object to it as incompetent, irrelevant and immaterial—each case stands on its own footing—and on the further ground that the questions involved in this matter are not subject to collateral attack.

Objection overruled. Defendant allowed an exception.

Judge WINN.—I now offer in evidence the complaint, which is sworn to by Mr. Kenzie on the third day of October, 1910, which furnished the basis for the issuance of the warrants for the arrest of Mackey, Black, Seitz and Hunsucker, and I will ask that the stenographer copy it into the record and make it a part of the record. I also offer in connection therewith the warrant upon which these parties were ar-



(Testimony of Al Black.)

rested, and ask that it be copied into the record and made a part of this case.

Same objection. [446]

By the COURT.—The main purpose seems to be to show that they were arrested at the instance of the superintendent of the Alaska-Juneau; they will be admitted.

Defendant allowed an exception to the ruling of the Court.

Judge WINN.—Both the complaint and warrant states that Mr. Burch would identify these John Does and Richard Roes. It is in the case of the United States versus Angus Mackey and others.

They are marked Plaintiff's Exhibits "X" and "Y" and copies are attached hereto and made a part hereof.

By the COURT.—They may be temporarily withdrawn from the files in that case and returned to the files when copied by the stenographer.

Mr. HELLENTHAL.—You will follow this up, I understand, with the verdict of the jury.

Judge WINN.—I will if you want to—any time you please. There is another paper I desire to offer in the proceedings before Grover Winn. It shows that the attorneys of the Treadwell people were associated with the district attorney in the prosecution of this case.

Mr. SHACKLEFORD.—The warrant is further objectionable unless counsel offers with the warrant the return on back of same.

Judge WINN.—If they want to offer any of these

(Testimony of Grover C. Winn.)

matters they may do so.

Mr. SHACKLEFORD.—The warrant is incomplete.

By the COURT.—I will entertain your offer if you care to offer any part of the record. The objection will be overruled.

Defendant allowed an exception to the ruling of the Court.

Judge WINN.—I will call Grover Winn. [447]

**[Testimony of Grover C. Winn, for Plaintiff  
(Recalled).]**

GROVER C. WINN, recalled as a witness in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. You are the United States commissioner for the Juneau precinct? A. Yes, sir.

Q. How long have you been in that position?

A. Since August 3, 1910.

Q. Have you a record of criminal matters that are prosecuted in your court? A. I have.

Q. You keep it in the form of what sort of book?

A. Criminal docket.

Q. Now, I wish you would turn to the case of United States vs. Mackey and others, wherein they were charged with having committed the crime of assault, I think, with a deadly weapon or assault with intent to kill, on the third day of October, 1910, and arrested on a warrant sworn out by Mr. Kenzie, superintendent of the Alaska-Juneau Gold Mining

(Testimony of Grover C. Winn.)

Company.      A. Yes, sir.

Q. You have the proceedings?      A. I have.

Judge WINN.—I will state to the Court that the orders I am about to offer in evidence by the commissioner deal with two cases,—one is the case that was made out against Mr. Mackey, Black, Seitz and Hunsucker by reason of a complaint verified by Robert A. Kenzie on the 4th day of October, 1910, upon which complaint he sought to have these parties bound over and put under bond to keep the peace, and the orders I am about to have read or offer in evidence to the Court [448] from the criminal docket deals with both cases, and shows the disposition of this other case at that time, and I offer in evidence the complaint in that case—that is, the original in the case where they were bound over to keep the peace. Both cases were disposed by the commissioner at the same time and the orders entered are intermingled.

Mr. HELLENTHAL.—We object for the reasons offered against the former offer of the warrant and the complaint in the former case, and for the further reason—certainly no one can object to keeping the peace and a complaint against anyone, asking them to keep the peace, does not hinder them from doing any lawful thing whatsoever or couldn't affect their doing a lawful thing, and if it was an unlawful thing they were about to do, certainly they should be bound over. It has no materiality and no effect upon these parties whatsoever, and no further action was taken on the complaint except that it was dismissed.

(Testimony of Grover C. Winn.)

Judge WINN.—This binding over case came up at the same time that Mr. Mackey and others were having the preliminary hearing before Judge Winn. It will show an agreement that was entered into between the attorneys for the Treadwell Company and the United States District Attorney, entered into with Mr. Burton,—that these parties had promised to do certain things if the bond was waived, and there is a stipulation entered in there by which our people were to go back on the claim, and we follow it up by showing that we did afterwards go back on the claim and go to work where it was agreed we should do it, and we were arrested again on the first day of November. It shows the complaint was being prosecuted more particularly by the defendant company, because their attorneys were there representing them and entering [449] into stipulations, etc. It shows the disposition of this case and the other case in Grover Winn's court.

Objection overruled. Defendant allowed an exception.

Mr. HELLENTHAL.—If Judge Winn will show a stipulation to which I was a party of the character he announces, I will withdraw all objection to this testimony.

Judge WINN.—We desire to have marked for identification the original complaint sworn to by R. A. Kenzie on the 4th day of October, 1910, before G. C. Winn, which is termed "Information and Complaint of Threatened Crime."

Q. Please turn to this book of criminal procedure

(Testimony of Grover C. Winn.)

or the criminal docket in your court, and I will ask you if you have any entries in there with respect to the disposition of this bind over to keep the peace case, and also the charges that were preferred against Mr. Mackey and others for assault with intent to kill.     A. I have.

Q. It consists of about one page of your record?

A. Yes; on the information of a threatened crime it consists of one page; the other is two pages. This is on the information for a threatened crime.

Judge WINN.—We desire to offer in evidence page 222 of the criminal journal of the commissioner's court at Juneau and we ask that it be read into the record.

Mr. HELLENTHAL.—We object to that as incompetent, irrelevant and immaterial—it neither proves nor disapproves any of the issues in this case.

By the COURT.—I have doubt whether there is any variety attached to this docket, but it will be admitted subject to argument on that question, if it should be of any vital moment in the case. [450]

To which ruling of the Court counsel for defendant is allowed an exception.

The WITNESS.—(Reading:)

**[Exhibit—Page 222 of Criminal Journal.]**

*In the Justice's Court, Juneau Precinct.*

UNITED STATES OF AMERICA

vs.

ANGUS MACKEY, ED SEITZ, AL BLACK and  
E. S. HUNSUCKER.

1910—October 4th.

Complaint made and sworn to by R. A. Kenzie charging information and complaint of threatened crime.

Warrant issued for arrest of defendants—October 5th, warrant returned endorsed “Hereby certifying that I received the within warrant on the 4th day of October, 1910, at Juneau, Alaska; that I served the same on the same day and place, by arresting the within named defendants, Angus Mackey, Al Black, Ed Seitz and E. S. Hunsucker and will now produce them in court. Dated Juneau, Alaska, October 5, 1910. Marshal’s fees for service, \$12. H. L. Faulkner, United States Marshal, Hector McLean, office deputy.

October 5th—as the defendants were already before the Court upon another charge, they waived their rights to a hearing until the other (the first charge) herein was completed.

October 7th—complaint read to the defendants and nature of charge explained. Mr. Burton, as counsel for the defendants, stated that they had no desire to break the peace or destroy property. Mr. Hellen-thal and Mr. Bayless in court as counsel for Treadwell,—Mr. Rustgård appearing for Government. Mr. Rustgard stated that if these men would give their word to keep the peace, he thought it sufficient. Mr. Burton stated that his clients would give their word not to interfere with work of the Juneau-Alaska people. Ordered by the Court that irrespective of title and rights to land that each party was



(Testimony of Grover C. Winn.)

to be [451] allowed to proceed to work then under way, without interference with the other side.

Defendants promised and understood by all parties.

Defendants ordered discharged.

Judge WINN.—That is all.

By Mr. HELLENTHAL.—These entries were made by you at the time this case was tried before you? A. Yes, sir.

Mr. HELLENTHAL.—That is all.

Witness excused.

Judge WINN.—I will now recall Mr. Mackey. [452]

**[Testimony of Angus Mackey, for Plaintiff  
(Recalled).]**

ANGUS MACKEY, recalled—Continuation of direct examination.

(By Judge WINN.)

Q. Did you or did you not know when you took charge of the property up there in 1910 that there were some unpatented claims that you had to do the assessment work on? A. Yes, sir.

Q. I will ask you if this work that you did up there, if you intended it and directed it towards the assessment work on those claims as well as the opening up and development of the property.

Objected to as incompetent, irrelevant and immaterial, and calling for a conclusion and leading.

Objection sustained as leading.

Q. I will ask you if you went up there to do the assessment work on the property there in 1910,

(Testimony of Angus Mackey.)

whether you did it or not.

Same objection.

By the COURT.—If it goes to the intention of whether he did do it, he may answer.

Defendant allowed an exception.

A. Yes.

Mr. SHACKLEFORD.—We move to strike the answer as stating a conclusion of the witness.

By the COURT.—The answer stands as an answer to the question if he went up there to do the work.

Defendant excepts. Exception allowed.

Q. I will ask you if you did any assessment work on those unpatented claims that year.

A. I did—I had it done.

Mr. SHACKLEFORD.—I move to strike that answer on the ground that the answer calls for a conclusion. [453]

Objection overruled and motion denied. Defendant allowed an exception.

Q. Besides the work you have already described to the Court this morning that you did, I will ask you if you did any additional work on any unpatented claim up there, leaving out the question of the Parish #2—I believe you described this morning what you did on the Parish #2—I will withdraw that question. How many men did you have, off and on, working up there on the various places on this Ebner property during the year 1910, that is, I mean, approximately, —the average number of men you had working?

Mr. SHACKLEFORD.—We object to that as call-

(Testimony of Angus Mackey.)

ing for a conclusion of the witness and not the best evidence.

Objection overruled. Defendant allowed an exception.

A. I had from fifteen to sixty.

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. What is your position?

A. I am superintendent of construction, is my position—I am acting superintendent at present.

Q. For whom? A. For the Ebner mine.

Q. For the Ebner mine? A. Yes.

Q. You are not employed by the California & Nevada Copper Company?

A. This work is done on the Ebner mine.

Q. Whom are you employed by and whom have you been employed by since you have been working up there on this property?

A. I was employed by F. L. Underwood of New York.

Q. Did he pay you?

A. Yes, he paid me. [454]

Q. Then, you don't represent the California & Nevada Copper Company?

A. Yes, the California & Nevada Copper Company; yes, sir.

Q. As a matter of fact, your employer—

A. You asked me who I was employed by and I told you F. L. Underwood.

Q. Acting for the California & Nevada Copper Company?

(Testimony of Angus Mackey.)

A. For the California & Nevada Copper Company and the Ebner mine—the work is done on the Ebner mine.

Q. But you are actually employed by the California & Nevada Copper Company? A. Yes, sir.

Q. And have been during the times you have been up on this property known as the Ebner property—you have been in their employ during all that time?

A. Yes, sir.

Q. Now, all the men employed by you in connection with this work are employed by you as employees of the California & Nevada Copper Company, were they not?

Judge WINN.—We object to all this testimony on this particular point, and if your Honor overrules it, we ask for an exception. My objection is that it is incompetent, irrelevant and immaterial. It has already been shown in the case that title to the property is vested in the Ebner Gold Mining Company and they could not prove any title or right to possession, etc., by evidence of this kind.

Objection overruled. Plaintiff allowed an exception.

Q. You say that all the men that were employed by you in connection with this work were employees of the California & Nevada Copper Company and were paid by the California & Nevada Copper Company?

A. The California & Nevada Copper Company, on the Ebner mine. [455]

Q. On work in what is known as the Ebner mine?

A. Yes, sir.

(Testimony of Angus Mackey.)

Q. And they were not employed by Mr. Ebner or the Ebner Company.      A. No, not at all.

Judge WINN.—We object to that last question and the conclusion of the witness as not the best evidence.

By the COURT.—I think I understand the testimony. Objection overruled. Plaintiff allowed an exception.

Q. You took possession of this property for the California & Nevada Copper Company?

Judge WINN.—We object to the question as calling for a conclusion of the witness and not the best evidence.

Objection overruled. Plaintiff allowed an exception.

A. No, I didn't take possession. Mr. Bent took possession—Geo. E. Bent was the manager.

Q. And he left you here in charge?

A. Well, yes; when I came up I had charge but I was working in Seattle getting the timber work ready.

Q. George E. Bent was manager for the California & Nevada Copper Company?      A. Yes.

Q. Now, you and Mr. Bent came up here together with Mr. O'Boyle and Mr. Briggs and some other man who was interested in the California & Nevada Copper company, did you?      A. Yes, sir.

Q. All came up together?

A. No, not together. I came up after they did.

Q. Were they here when you got here?

A. Yes, I met them here.

(Testimony of Angus Mackey.)

Q. Now, on the third day of October, which you have been referring to so much in your testimony, how much of this [456] flume that you say four thousand feet of it had been constructed was then constructed?

A. Well, there was considerable work getting ready for the flume, that is, for the flume proper.

Q. The flume had not been started?

A. You mean—

Q. The 4,000 feet of flume itself?

A. They start the flume as soon as you begin working the right of way—that is, part of the flume.

Q. I mean the flume structure, for which you have been constructing the timber work, the flume?

A. No, it was some time afterwards, but the grade is part of the flume, I want you to understand.

Q. I understand you to say that you have spent \$35,000 for machinery, approximately? A. No.

Q. That is the entire amount spent to date?

A. Not counting the machinery.

Q. Thirty-five thousand, not counting the machinery? A. Approximately.

Q. You mentioned your machinery on the dock here—how much did you put that at?

A. I believe I mentioned one-fifth of the purchase price was paid on the machinery before it was shipped.

Q. That is your conclusion?

A. Yes, according to the terms of the contract.

Q. The machinery is here on the dock?

A. Part of it.



(Testimony of Angus Mackey.)

Q. Not consigned to the California & Nevada Copper Company nor to the Ebner Company, is it?  
[457] A. I don't know that.

Q. The freight on it has not been paid, has it?

Objected to as incompetent, irrelevant and immaterial. Objection sustained.

Q. What is the grade of that flume?

A. What do you mean?

Q. The flume you have mentioned—what is the grade of it?

A. In what way? What do you mean by the grade?

Q. Have you an average grade on it?

A. Yes, sir.

Q. And the grade is the same all the way around?

A. Pretty much.

Q. What is the grade? A. By the road or what?

Q. The way you ordinarily describe the grade—if you were describing the flume you would say a flume so many feet by so many feet in size, with a grade of what?

A. It has got about approximately 11 feet fall from the dam to the penstock.

Q. And what is that distance? Do you know what that percentage of grade is?

A. No, I didn't figure up the per cent.

Q. Now, you came up here first—what time did you take charge, the third of August, 1910?

A. No, really about the 11th of August, and then I went down below again, the tenth or eleventh, something around that.

(Testimony of Angus Mackey.)

Q. So you had nothing to do with the property until about the 11th of August?

A. No, nothing.

Q. And then you went below. How long were you gone?

A. I was gone some time. I can't remember just exactly. [458]

Q. You got back here in September, some time in September? A. Yes, sir.

Q. Were you here when the company brought its first injunction suit to prevent us from occupying the Lotta and the Parish ground? A. No.

Q. You knew when you got back that such a suit had been brought? A. I heard talk of it.

Q. And as soon as you arrived here you knew that we claimed the right, that is to say, the Alaska-Juneau Company claimed the right, to take the water out of the creek somewhere in the vicinity of the Parish-Lotta side line?

A. Yes; I understood you were trying to jump our water right.

Q. And you knew we had made locations in that vicinity? A. Yes, I understood you had.

Q. And you knew that there was a man up there working on the water right, didn't you? A. No.

Q. Mr. Harry? A. Is that your gun-man?

Q. I don't know.

A. There was a gun-man-Harry, they called him—up there.

Q. O. M. Harry—you knew there was a man up there?

(Testimony of Angus Mackey.)

A. I understood there was a man by that name living in the cabin that was built while I was down below.

Q. And built along the line of this flume?

A. I believe down underneath the flume.

Q. And you knew, also, that they were driving a tunnel in the neighborhood of Snowslide Gulch, for the purpose of carrying the flume under Snowslide Gulch? A. No. [459]

Q. You didn't know that?

A. No, not at that time.

Q. You knew enough to know what the Alaska-Juneau people had started out to do?

Judge WINN.—I object to the question as calling for a conclusion of the witness and as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. Yes, I understand they tried to steal the water right—that is the way I understood it.

Q. Yes; and you understood that you tried to get them off the property and hadn't succeeded, by an action in court?

Judge WINN.—I object to that—that is not the best evidence.

Objection overruled. Plaintiff allowed an exception.

A. I have already answered that question—I was not here at that time.

Q. But when you got back, that was your understanding of the situation?

(Testimony of Angus Mackey.)

Judge WINN.—Same objection. The record is here and is the best evidence.

Objection overruled. Plaintiff allowed an exception.

A. Yes.

Q. And then, under those circumstances you employed a gang of men and told them to go on the Lotta lode and blast down the hill, so as to interfere with the men that were working below?

A. We were doing the work on the Parish and Lotta—we were making trails so our men could get around.

Q. You had no intention of blasting on the men below?

A. We had a right to blast on the ground that was patented.

Q. And that is where you ordered the blasting done? [460] A. Yes, sir.

Q. And that was for the purpose of getting rid of the men of the Alaska-Juneau on the ground?

A. We were working on the Parish.

Q. Did you put the men to work on the Parish?

A. I did.

Q. That was after you got back here?

A. That was after I got back here.

Q. And about the same time you employed this gang of men to go up on the sidehill and blast down where the Alaska-Juneau men were working?

A. No; it was some time after that.

Q. How long after?

A. It was about the 18th of September I put them

(Testimony of Angus Mackey.)

to work on the tunnel.

Q. Where did you put the men to work—

A. On the Parish.

Q. (Continuing.) —on the sidehill above?

A. And shortly after that we started another tunnel up above.

Q. In the Lotta? A. No, in the Parish.

Q. Parish #2? A. Parish #2.

Q. Where was this blasting done that Mr. Black was arrested for? A. On the Lotta.

Q. And when was it you put him and his crowd up there above the men that were working for the Alaska-Juneau?

A. They were working up there before the Alaska-Juneau started to work up there.

Q. You put them on the sidehill of the Lotta—to blast on the Lotta? [461] A. Yes, sir.

Q. Before anybody started to work below for the Alaska-Juneau,—on the Lotta? A. Yes, sir.

Q. That was a patented claim?

A. That was a patented claim, as I understand it.

Q. And you at that time were adopting a general system for the development of the property, were you not? A. Yes.

Q. Which contemplated a crosscut tunnel from beyond the Cape Horn lode under the whole property? A. Yes.

Q. Now, will you kindly state to the Court the object of development the surface ground of the Lotta lode at that particular point.

Objected to. Objection overruled. Plaintiff al-

(Testimony of Angus Mackey.)

lowed an exception.

A. To keep possession of the claim.

Q. Of the Lotta? A. Yes, sir.

Q. Why, to keep possession of the Lotta?

A. To keep possession from jumpers.

Q. What sort of work were they doing?

A. Who? Your people?

Q. Your people.

A. They were making trails across there, so they could get down to the Parish #2, to the two tunnels we were working on.

Q. I will hand you the opinion of the Court filed in #803-A on the 6th of September, 1910. Before that time and upon your arrival here, you became acquainted with the contents [462] of that opinion, didn't you?

Judge WINN.—We object to this paper. I think there is a certified copy of Judge Lyons' opinion among the files and this is not certified.

Objection overruled. Plaintiff allowed an exception.

A. No, I did not.

Q. Didn't know anything about that?

A. Except I knew there was a suit; that is all.

Q. You knew there was a suit and that you had lost in your effort to have our men enjoined from going on the property—you knew that, didn't you?

A. I believe that is my understanding.

Q. Now, Mr. Mackey, I understood you to say in your direct examination that you sent some men on the Parish Claim #2 after your return here in Sep-



(Testimony of Angus Mackey.)

tember, for the purpose of doing the assessment work?

A. Doing the requisite amount of work to get a patent.

Q. The claim had been located in 1899?

A. I don't know.

Q. You don't know anything about that?

A. No.

Q. You have been consulting frequently in the getting up of these pleadings,—you have had a good deal of consultation with your lawyers about this title, haven't you?

A. No, I haven't taken much interest. The lawyers attended to that.

Q. So without making any inquiry as to the age of that claim and the number of years of assessment work that had been done upon it, you concluded to do considerable more assessment work, so you could get a patent?

A. That was the Parish #2 and the Parish #1, was two claims [463] that the assessment was required to be done upon.

Q. I am talking about putting your men on there doing enough work to get a patent—how did that suggest itself to your mind?

A. Through the company's attorneys.

Q. You were advised that there wasn't enough work there yet to get a patent?

A. Yes; I was advised there wasn't the requisite amount of work to get a patent.

Q. Now, then, Mr. Mackey, with reference to

(Testimony of Angus Mackey.)

putting this amount of work on the Lotta sidehill, I understand you to say that originally you had no intention of putting them there for blasting rocks down on the Alaska-Juneau people.

A. I never have testified to any such thing as that and none of the men have testified to that.

Q. Blasting so the rocks would roll down the hill and interfere with them?

A. We certainly tried to keep them off the ground, if that is what you mean.

Q. And that is what you originally put that gang of men to work there for?

A. What do you mean by a gang?

Q. The eight or ten men that Black testifies to?

A. Yes; I put several men to work up there, yes.

Q. And you put them there for the purpose of blasting, so the rocks would roll down the hill and interfere with the Alaska-Juneau men's work down below, didn't you?

Objected to as repetition. Objection overruled. Plaintiff allowed an exception.

A. Yes, I put them there to hold the property if I could. [464]

Q. And you put them there for the purpose, among other things, of blasting, so the rocks would roll down on them?

A. If you mean I put them there for the express purpose of hurting somebody, you are speaking something that is not true.

Q. The rocks might have missed them, but I am asking you the question if you did not put them

(Testimony of Angus Mackey.)

there for the purpose of blasting, so the rocks would roll down the hill in the vicinity of where they were working.

A. They have always had warning. Whenever there was rocks rolled down or blasted down, the men below had warning.

Q. I am asking the purpose for which that gang of men were put on the sidehill of the Lotta—wasn't that the purpose?

A. The purpose was to hold possession of the ground.

Q. And to blast so the rocks would roll down the hill and interfere with the Alaska-Juneau men working below?

A. I certainly was going to hold possession,—if rolling down rock would do it.

Q. Answer my question. Wasn't that the purpose you put the men there for?

A. Partly for that, and partly for building trails.

Q. Did you make an examination of the Parish lode with reference to the amount of work that had been done upon it before, when you decided how much work you wanted to do, in order to complete the necessary work for patent proof?

A. Well, I had the surveyors go over it to see how much work was requisite, to do the work that had to be done. They knew the amount, and I didn't.

Q. How much work did you calculate on doing in order to complete the amount necessary to obtain a patent? [465]

(Testimony of Angus Mackey.)

A. The requisite amount of work for the patent.

Q. How much work do you estimate had already been done and how much did you estimate you had to complete?

Objected to as not the best evidence. Objection overruled. Plaintiff allowed an exception.

A. I don't remember now how much it was—I couldn't state, but the surveyors claimed there wasn't enough work done.

Q. So you had some more work done?

A. So I had some more work done.

Q. How many feet did you drive in that tunnel last fall?

A. I don't know now. I didn't go down and measure it after it was done. I had the surveyors do that.

Q. Didn't you give your foreman some instructions as to how much work he had to do there?

A. No; we kept on working there.

By the COURT.—What tunnel?

Mr. SHACKLEFORD.—I mean the tunnel in which the work was done—between the Alaska flume and the creek—that is where a particular amount of work was done.

The WITNESS.—On both those tunnels, one above the flume and the other under it.

Q. One was on one side of the creek and the other on the other?

A. No, both on the same side.

Q. Both on the right-hand side going up?

A. Both on the right-hand side going up.

(Testimony of Angus Mackey.)

Q. Now, I want you to tell the Court how much you calculated on doing there?

Objected to as repetition.

By the COURT.—Can you not tell how much you intended to do to be sure to have enough for patent in dollars and cents? [466]

A. I calculated to have fully \$500 or more.

By the COURT.—How much additional work did you calculate to do when you took charge before applying for patent,—that is, what he is asking you? If you remember now, you can state; if you do not, you can say so. A. I can't remember now.

Q. Do you know how much work you actually did before you stopped the men, on Parish #2?

A. No, the surveyor, he measured up the work.

Q. I don't mean in feet—how many men did you keep there, and how many days did you have them?

A. We had a number of men there at different times.

Q. Could you give me any idea, approximately, of the cost of the work that you did, for the purpose of perfecting your assessment work for patent?

A. I couldn't do it right offhand.

Q. Can you do it a little later? A. I might.

Q. Now, there has been some testimony here concerning the arrest which followed the explosions on the Lotta side-hill early in October—you were not detained in the custody of the marshal, were you?

A. No.

Q. You and three other men were arrested?

A. Yes, sir.

(Testimony of Angus Mackey.)

Q. How many men did you leave at the mine?

A. There was six or eight up there, probably,—there was eleven up there.

Q. Eleven altogether?

A. Yes; there was some more men working on the other side.

Q. You and the other defendants were convicted in the case [467] of the United States versus Mackey and the three other men?

A. I don't know as we were convicted.

Q. You were sentenced—you were fined, were you not? A. Fined, I believe.

Q. This work you started Al Black at—that was way up on the Golden Fleece lode—survey #91, in the vicinity of the Golden Fleece?

A. It is up at the Ebner dam.

Q. It is at the point marked in the conflict between the Crown Point and the Golden Fleece lode, upon the plat, is it not?

A. I believe the Ebner dam is marked on that map there.

Q. The place marked Ebner dam? A. Yes, sir.

Q. All these men employed by you were working under you and you were working under Mr. Bent?

A. Yes.

Mr. SHACKLEFORD.—That is all.

(By Judge WINN.)

Q. Mr. Shackleford has questioned you quite at length upon your employment with the California & Nevada Copper Company. Now, I want you to tell me just the facts about your employment. You say



(Testimony of Angus Mackey.)

a man by the name of Underwood employed you. Where does Underwood live?

Objected to as not proper redirect examination. Objection overruled. Defendant allowed an exception.

A. His office is on Broadway, New York.

Q. Now, with whom did you have your understanding to come out here and commence the work,—was it with the California & Nevada Copper Company, or was it with this man Underwood? [468]

A. It was Underwood I had my agreement with.

Q. Did you have a written agreement with him or oral one? A. An oral one.

Q. What were you to come here and do—were you to come out here and superintend the mines or build a mill? A. Superintend the construction work.

Q. Now, Mr. Shackleford asked you a question which was intended to convey to you that you came up here or that you met some people here, a man by the name of O'Boyle and Briggs, etc., and intended to convey to you that you knew that these men were coming here representing the California & Nevada Copper Company. Where did you first meet O'Boyle and Briggs? A. In New York.

Q. Did O'Boyle have anything to do with hiring you? A. No.

Q. Did Briggs have anything to do with hiring you? A. No.

Q. Then, when you got out here in the summer of 1910, you met those two gentlemen here in Juneau and Mr. Bent, didn't you?

(Testimony of Angus Mackey.)

A. Yes, Bent wired me to meet them. I was in Seattle.

Q. Did those parties have anything to do with the contract of hiring or engaging you to do this service you have been testifying concerning?

A. No; my engagement was through Mr. Underwood.

Q. Did Underwood ever tell you he had an option upon the stock of the Ebner Gold Mining Company? A. No.

Q. You don't know anything about the stock?

A. No.

Q. Now, when you got out here at Juneau, you had already had [469] an understanding that you were to come here and take charge of the construction work upon this property? A. Yes.

Q. Did you have any additional understanding with Mr. Bent what your duties should be?

A. Mr. Bent wanted me to look after the other department while he wasn't here.

Q. That agreement you had with Mr. Bent?

A. That agreement I had with Mr. Bent,—just that point, yes.

Q. You don't know who Mr. Bent was acting for or anything about it?

Objected to as leading. Sustained.

By the COURT.—He asked you who Mr. Bent represented and you said you didn't know.

A. Yes, sir.

Q. The money that has been sent out here to you has come through apparently what company to you?

(Testimony of Angus Mackey.)

A. The California & Nevada Copper Company.

Q. Have you explained to the Court about all you know about this contractual relation between you and the California & Nevada Copper Company—you have explained it all, have you?     A. I think so.

Q. You don't know what arrangements either Mr. Bent or Mr. Underwood have with the California & Nevada Copper Company,—not a thing, do you?

Objected to as leading.   Objection sustained.

Q. I will ask you whether or not you know anything about any agreement between Bent and the California & Nevada Copper Company and Underwood and the California & Nevada Copper Company—do you know anything about it? [470]

A. I don't know anything about the arrangement.

Q. Do you or do you not know anything about any agreement made by that company with Mr. Ebner, either individually, or Mr. Ebner on the part of the Ebner Gold Mining Company?

By the COURT.—He has answered he don't know.

Q. Now, Mr. Shackleford questioned you considerably about some work that was being done upon one end of the Lotta lode claim, on the right-hand bank of Gold Creek as you go up the creek. Sometime about October third and prior thereto, you spoke something about building trails. Did you build any trails across the Lotta claim?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

(Testimony of Angus Mackey.)

Q. Where are these trails leading to—from what place to what place—that you were building across the Lotta claim?

Same objection. Objection overruled. Defendant allowed an exception.

A. Leading from the boarding-house, the old Ebner boarding-house, to the two tunnels on the Parish claim that we were working on.

Q. Parish #2? A. Parish #2.

Q. Did you ever measure up the work that was done on the lower tunnel on the Parish #2?

A. No, I did not; I was busy at that time and left that to the surveyor.

Q. You never measured up the work done on the upper tunnel?

A. No, the surveyor done both of them.

Q. You said something about your intention to hold possession of the Lotta patented claim. I will ask you if you were doing the best you could also to hold possession of the Parish [471] #2?

Objected to as leading. Objection sustained.

Q. I will ask you if aside from the real assessment work, in the prosecution of other work on the Parish #2, whether or not you were keeping men on there for any other purpose, during the summer of 1910—on the Parish #2?

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial and after the time the plaintiffs in this case are committed to in the entry, not only in the complaint in 803 but in the original complaint in this suit.

(Testimony of Angus Mackey.)

By the COURT.—It is preliminary. Objection overruled. Defendant allowed an exception.

A. No, I don't think so.

Q. Well, do you know at that time whether or not the opposing company was trying to get possession of any part of the Parish #2? A. Yes, they were.

Q. Were you making any efforts to keep them off of there?

A. Yes, we were making efforts to keep them off.

Q. Now, where did these people first commence their work—that is, when I refer to these people I mean the agents and representatives of the defendant company—where on the property that is in controversy did they first commence doing any work that indicated they were coming on the property for any purpose?

A. I believe down near Snowslide Gulch.

Q. How far away, approximately, is that from their dam that they ultimately constructed in Gold Creek—approximately how far?

A. Approximately, I should judge, 800 or a thousand feet.

Q. When did they make their first appearance upon the upper side line of the Parish #2 and on the Lotta claim, to your [472] knowledge? When did you first find out that they were getting in there?

Objected to—

By the COURT.—When did you come here first?

A. I think about the 10th of August,—I think it was—I can't remember just exactly. I think about the 5th to the 10th of August.

(Testimony of Angus Mackey.)

Q. You say after you came here first, you remained a while and went away and came back again?

A. Yes, sir.

Q. You remember approximately how long you remained on the first trip up?

A. I think between two and three weeks.

Q. And then you went away and remained until about what time? A. Some time in September.

Q. Now, I will ask you when you knew that these officers and agents of the defendant company were making any effort to come up on the Lotta claim and the upper part of the Parish #2?

Mr. HELLENTHAL.—We object to that. Let him state what he saw.

Objection overruled. Defendant allowed an exception.

A. It was the latter part of September, to my best knowledge.

Q. In the construction of their flume up there—I will ask you when they commenced to construct a flume down Snowslide Gulch, some six or eight hundred feet away from where the dam was ultimately put in—I will ask you if they continued constructing the flume from Snowslide Gulch on up to the intake right along on a line, or did they construct it some other different way from there?

A. They were working on the lower end first and then they afterwards [473] the latter end of the month, started in at the upper end.

Q. And that is when the row took place?

A. Yes, sir.



(Testimony of Angus Mackey.)

Q. So they were building the flume from both ends?

A. They were building the flume from both ends, when they arrested me.

Q. You don't know anything about the assessment work that was done on any one of those Parish claims prior to 1910?

(Question withdrawn.)

Q. Did you have anything to do with any assessment work at all on either one of those Parish claims prior to 1910?     A. Nothing.

Q. Did you ever make a personal examination to see what had been done?     A. On the Parish?

Q. On the Parish claims.

A. No, I did not. I went down to the tunnel, that is all, the tunnel down at the creek.

Q. You didn't go over the claim to ascertain the amount or kind of assessment work that had been done?     A. No, I did not.

Q. Now, I will ask you if you were not advised by your attorney that it was good to stay upon that claim there while the opposing parties were attempting to get upon it, to stay there, in the absolute possession of it—were you not advised to that effect?

Objected to as leading.     Objection sustained.

Q. What other advice, if any, were you given by your counsel with respect to this Parish claim, other than you have already [474] related, if anything?

Objected to as incompetent, irrelevant and immaterial.

(Testimony of Angus Mackey.)

Objection overruled. Defendant allowed an exception.

A. You mean the Parish & Lotta?

Q. Yes.

A. In the work we were doing up there to be careful and not have any of the opposing parties hurt, which we didn't propose to do, anyhow—we didn't calculate to hurt anybody up there.

Q. What, if anything, were you advised by your attorneys as to the necessity of keeping some parties on the ground all the time?

Objected to as leading. Objection sustained.

Q. Was there any other advice given you by counsel about keeping up your work on these two claims?

Objected to as leading. Objection sustained.

Judge WINN.—That is all.

(By Mr. SHACKLEFORD.)

Q. Where did you first meet Mr. Underwood?

A. In New York.

Q. At his office?

A. I couldn't state whether it was in his office or not.

Q. You have been to his office? A. Yes, sir.

Q. Do you know what is on that door?

A. Well, I can't remember now—there are the names of several companies on the door.

Q. The company's name is on the door?

A. Yes, sir.

Q. The California & Nevada Copper Company?

[475]

A. Several companies' names are on, if I recollect

(Testimony of Angus Mackey.)

—I wouldn't be positive, you know.

Q. You knew when you were dealing with him that you were not dealing with him personally—you were dealing with him as representing the California & Nevada Copper Company—you have known that all the time?

A. I knew that I was dealing with a company and he was at the head of one.

Q. And that you were not dealing with Underwood as a person, but dealing with him as representing a company?

A. I knew that he was at the head of a company.

Q. And that the dealings you and he were having were concerning the business and for that company, didn't you?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. plaintiff allowed as exception.

A. Why, yes, certainly—I understood he was the head of a company.

Q. And that is what your dealings were about—he was dealing with you in behalf of that company—didn't you know that?

A. Well, yes; the first dealings I had with him was to build a mill in Alaska.

Q. For him or the California & Nevada Copper Company?

A. No, it was not mentioned. It was simply his own name.

Q. But before you left there to come up here and build this mill, you knew you were coming up here

(Testimony of Angus Mackey.)

to build it for the California & Nevada Copper Company and not for Mr. Underwood, didn't you?

A. I knew that Mr. Underwood was at the head of it, yes—if that is what you are trying to get at.

Q. You knew that Mr. Underwood was dealing with you as a representative [476] of the company and not personally, did you not?

Objected to as incompetent, irrelevant and immaterial.

By the COURT.—You understand the question—whether in your dealings with him you were dealing with him personally, on his own account, or whether you were dealing with him as the representative of this company?

A. I was dealing with him as the representative of the company, I suppose.

Q. Now, you say you put these men on the Lotta lode to construct trails?

Objected to as misleading.

Q. You put them on there for the purpose originally of building trails across the Lotta?

A. Started to build trails there; yes, sir.

Q. Now, I will ask you if you did not testify in the preliminary hearing in Case #823-A, being the case of the Alaska-Juneau Gold Mng. Co. vs. The Ebner Gold Mg. Co. as follows—I will change that question. I will ask you if you did not testify in the case of the United States versus Mackey in the Commissioner's Court as follows: "Q. I think you told us about that part of it—was that the only purpose for which you put the men to rolling rocks. A. Certainly. Q. Did

(Testimony of Angus Mackey.)

you keep them there for any other purpose? A. To protect the rights of our people. Q. For any other purpose? As I said they might be used for this work later on but etc." Did you so testify?

Judge WINN.—I object to the question. The question is unintelligible.

By the COURT.—He may answer and then make any explanation he cares to. [477]

A. To the best of my knowledge and belief I think I testified it was also to be used for cutting trails as well.

Q. That is in connection with the answer?

A. Yes, sir.

Q. Afterwards?

A. That is the way I think I testified.

Q. I call your attention particularly to this last answer. As I said, they might be used for this work later on. Now, I understand you, your recollection is that you added to that for the purpose of cutting trails?

A. Yes, sir; I think that is what I testified to.

Q. As a matter of fact, you know before you left Juneau on your trip south-bound that the Alaska-Juneau people had gone up there and taken possession of this,—posted their notice and taken possession of this property, with the intention of building a water right on the creek? A. Not at that time.

Q. How soon did you know it—you knew it before you got to Seattle? A. No, I did not.

Q. Did you go down with Mr. Bent?

A. Yes, but my understanding was it was on a dif-

(Testimony of Angus Mackey.)

ferent claim—*those* claim, the Auk Chief or some claim there.

Q. But you knew they had gone up there?

A. Yes; I knew they were trying to jump certain ground up there—that was my understanding.

Q. And you knew that Harry was up there, while you were in Seattle, didn't you?

A. No, I didn't know that.

Q. Didn't you have some conversation in Seattle with somebody about Harry? [478]

A. I don't think it.

Q. Didn't you testify on your examination in the case of the United States against Mackey as follows:

“Q. You testified that you heard a great deal of one O. M. Harry—you state you had heard about him in Seattle. Who told you? A. I don't know.

Q. You don't know? A. I couldn't say.” Now, I ask you if you didn't give that testimony on the hearing? A. I don't recollect that.

Q. Haven't you any recollection of it at all?

A. No, I don't recollect about that.

Q. You have no recollection of having discussed Harry with somebody in Seattle?

A. I may have—yes, I wouldn't say I have not.

Q. If you might have, who was it you might have had it with?

A. I don't know; probably some people from up here. The question might come up with some of my acquaintances that came down aboard the boat and we might have met and told me some of those things



(Testimony of Angus Mackey.)

that were happening up here—it might have been so.

Q. The surveyors that were surveying the Parish #2 and the Parish #1 lode claims for patent, who you say advised you to do some more work on the Parish lode—who were they?

A. Hill and Wettrick.

Q. Do you remember which one of them it was?

A. Well, I think probably I might have spoken to both of them in their office.

(Recess for ten minutes.)

(By Judge WINN.)

Q. During the recess you looked over this paper that Mr. Shackleford [479] presented to you, which purports to be some extracts from your testimony in the lower court upon the preliminary hearing—just preceding the questions that Mr. Shackleford asked you—will ask you if you remember substantially these questions being put to you by the district attorney—

Mr. HELLENTHAL.—We object to that as a self-serving declaration, unless it is an explanation of what he said subsequently.

Objection overruled. Defendant allowed an exception.

Q. I will read this. “The District Attorney: I want to get the names of those parties who were working there Monday afternoon under Al Black and I think I am entitled to find out. The Court: I think witness may answer; I think you may proceed with the cross-examination in the same manner. The District Attorney: You state that these men were put to work partly to drive Kenzie and his men from their

(Testimony of Angus Mackey.)

work below and partly from other purposes. Now what were those other purposes, besides rolling rocks down the hill in the Gulch? A. Is there any law to compel people not to work their own mining property? Q. Just answer my question. A. I would like to know. Q. Now, what was that work you spoke about? A. Well, we were protecting the rights to our property.” I will ask you if you testified concerning the matters I have asked you about, substantially as there indicated—did you testify something concerning that?

A. I believe I did.

Q. And substantially as testified there?

A. Yes, sir.

Judge WINN.—That is all. [480]

(By Mr. SHACKLEFORD.)

Q. What were you paying these men a day?

A. Which men.

Q. The laborers?

A. The men I had working up there?

Q. Yes.

A. From three to four dollars a day.

Q. From three to four? A. Yes, sir.

Q. They varied?

A. They varied, yes, according to the men.

(By Judge WINN.)

Q. What distinction did you make in them between three and four—what men did you pay four and what men three?

A. I paid the men working on the Parish claim, those I paid four dollars to.

(Testimony of Angus Mackey.)

Q. That was hard rock work?

A. Working in that tunnel,—yes.

Witness excused.

Judge WINN.—I will call Al Graham. [431]

**[Testimony of Al Graham, for Plaintiff.]**

AL. GRAHAM, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. Your name is Al Graham? A. Yes, sir.

Q. How long have you been in and about Juneau?

A. Eight or nine years.

Q. What has been your business principally?

A. Mining.

Q. You know Mr. Mackey? A. Yes, sir.

Q. You know Al Black? A. Yes, sir.

Q. You know Ed Seitz? A. Yes, sir.

Q. And Hunsucker? A. Yes, sir.

Q. Did you ever do any work for Mr. Mackey in 1910? A. Yes.

Q. Upon what is known as the Ebner property?

A. Yes.

Q. When did you first go to work up there?

A. The 19th day of September.

Q. What work were you put at up there?

A. Driving a tunnel.

Q. You have heard Mr. Mackey's testimony here in court, have you not, to-day? A. Yes, sir.

Q. And you heard him refer to Al Graham doing certain work up there—you are the same Al Graham

(Testimony of Al Graham.)

he referred to? A. Yes, sir. [482]

Q. Now, I will ask you when you were up there, if you became acquainted with a line that is brushed out from an old cabin on the right-hand side of the creek as you go up the creek, down towards the creek?

A. Yes, it was pointed out to me—that was the boundary line; that is all I know.

Q. When you went to work on the tunnel, where the tunnel with reference to that line brushed out across the creek?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial, and not competent to prove any title in the case, for the reason that the uncontradicted testimony shows the controversy arose over the property known as the Parish #2 lode in the month of August, 1910.

Objection overruled. Defendant allowed an exception.

A. It was down the creek.

Q. From that brushed-out line? A. Yes, sir.

Q. Is that the same tunnel that Mr. Mackey was testifying about in court that he put you to work on?

Objected to as calling for a conclusion of the witness.

Objection overruled. Defendant allowed an exception.

A. It was on the Parish #2.

Q. On what is called the Parish #2?

A. Yes, sir.

Q. As to the boundaries, etc., of that property up there, you never made any particular investigation?

(Testimony of Al Graham.)

A. No, I did not.

Q. Did you say you went to work there on the 19th of September?      A. Yes, sir.

Q. On that tunnel? [483]      A. Yes, sir.

Q. Was there anyone else working with you?

A. Mike McKenna.

Q. How long did you continue to work on this tunnel on this claim after you commenced?

Same objection. Objection overruled. Defendant allowed an exception.

A. I couldn't just tell you the number of days. Somewhere about twenty days, I guess. When I quit there there was still another man there—they didn't quit working.

Q. That was McKenna?      A. Yes, sir.

Q. I will ask you if you know Mr. Kennedy, who was in some wise connected with the Alaska-Juneau Gold Mining Company?

A. Yes, I know him when I see him.

Q. While you were working up there on this tunnel during this time, did you see Kennedy—did he come up there at any time?

A. I seen him twice above the tunnel—I seen him talking to Al Black. I brought up some steel and met Mr. Middleton coming down with some powder to blast.

Q. Do you remember what time he was up there talking to Al Black?

A. I think it was about the first of November.

Q. November or October?

A. No, October—October first.

(Testimony of Al Graham.)

Q. It was before the disturbance that took place up there on October third? A. Yes, sir.

Q. Did you hear any part of the conversation that took place between Kennedy and Black? [484]

A. He said to Al Black, "You hollered 'fire,' " and I said, "No, he didn't holler 'fire'; nobody fired anything here," and we were wrangling there, and I got the powder from Middleton and went down into town again. We had to climb a rope there.

Q. Was Middleton there?

A. Yes; he came down with powder and I gave him a load of steel to take to the blacksmith-shop, I had brought up. Mike McKenna and I was to use the powder to blast the holes we had drilled.

Q. Did you use the powder to drive the tunnel?

A. Yes, sir.

Q. On or about the first of October, do you remember approximately how much work you had done on the upper tunnel?

Same objection. Objection overruled. Defendant allowed an exception.

A. There was Ed Seitz and John Carlson working on the open cut there.

Q. From the 19th of September up to this day that Al Black had a conversation with Mr. Kennedy, what work had you been doing?

Same objection. Objection overruled. Defendant excepts.

Q. I ask you what work you had been doing from the time you commenced there on the 19th day of September up to the day that Kennedy was there?



(Testimony of Al Graham.)

A. I was working in the tunnel, hammering in the tunnel, single-jacking.

Q. How many had been helping you?

Same objection. Objection overruled. Defendant allowed an exception.

A. There was Mike McKenna was working with me and Middleton [485] used to take down the steel we needed. It was pretty hard there and we had to have extra steel come down.

Q. Where did you bring the steel down from?

A. From the blacksmith-shop, and he used to help, too.

Q. Where is the blacksmith-shop?

A. Up near the Ebner boarding-house.

Q. Up near the Ebner mill?

A. Yes, sir; just above the Ebner mill.

Q. You have stated now all the conversation you heard between Black and Kennedy?

A. Yes, at that time.

Q. Did Kennedy come back up there any more where you were working on the tunnel after the first—between the first and the third of October?

Same objection. Objection overruled. Defendant allowed an exception.

A. That is the only time I ever seen him.

Q. You were up there on the third of October?

A. In the tunnel? Yes.

Q. What time on the morning of the third did you go down to the tunnel that you have just described?

A. Got down to the tunnel about a quarter past 8,

(Testimony of Al Graham.)

I suppose, about that time—fifteen or twenty to eight.

Q. Had Kennedy and his people put in an appearance at the time you commenced work?

A. No, I hadn't seen anybody around there.

Q. You did know later on, did you not, on the third, about some men coming up there with Kenzie?

A. Yes, sir.

Q. When Kenzie and his men got there, where were you working? [486]

A. I was working on the Parish on the lower tunnel.

Q. Was McKenna there with you? A. Yes, sir.

Mr. SHACKLEFORD.—It is understood all this testimony goes in under our objection.

By the COURT.—Yes, sir, and you are allowed an exception.

Q. Did you see anyone with Kenzie on the third that you afterwards found out to be a Mr. Burch?

A. Yes, I am not acquainted with him—they called him Burch.

Q. Just tell what you saw take place up there on the third of October.

A. They were sliding poles down into the creek there.

Q. Who was?

A. The men. Burch was up on the old flume and Mr. Kenzie was down in the creek on a boulder there and some men were drilling—he was smoking cigars at that time.

Q. Did you see any other men working along on

(Testimony of Al Graham.)

the property just above the tunnel, on the Parish #2 on which you had been working? I mean up the creek.

A. Ed Seitz and John Carlson were working above there.

Q. What were they doing?

A. They were in the open cut and making trails there; they made a short trail. We have to climb up a rope a long way and go up on the old wagon road and they made a trail, cut through there.

Q. Where did that trail lead to?

A. Down to the Parish #2—the one above.

Q. That is down to one of the tunnels on the Parish? A. Both tunnels.

Q. Did you work, while you were working there, on the Parish #2,—did you do any work in the lower tunnel? [487]

A. I worked most of the time in the lower tunnel and a day and a half in the upper tunnel, rock work, mostly blasting.

Q. About what time in the morning did you first see Ed Seitz and Carlson working up there on what you have described to the Court as being a trail?

A. I seen John Carlson right by the penstock as I was going down, and Ed Seitz was mucking down at the upper tunnel, cleaning up an open cut there that morning.

Q. What do you mean by mucking?

A. Mucking in that open cut.

Q. Where is that open cut?

(Testimony of Al Graham.)

A. That is what they call the upper tunnel in the Parish.

Q. He was running an open cut to get into the tunnel? A. Yes, get under cover.

Q. Did you see anybody on trail work there?

A. John had been working and he said he was going to breakfast—about that time they worked early in the morning and late in the night there, both shifts.

Q. What, if anything, did you see that took place up there in regard to anything—did you see anything take place between Black and Kenzie and Burch?

A. No.

Q. Did you see Kenzie and Burch come up there?

A. Where Black was? No, I see them in the creek.

Q. About how far up the creek was it you saw Kenzie on this rock, from where the tunnel is on the Parish #2?

A. I should say about 200 feet, maybe a little more, maybe not quite that much—something around that, I should judge.

Q. Did you say you did or did not see Kenzie and Burch come up?

A. I didn't see that—they were up there when I went up above where the men were all working.  
[488]

Q. They were already up there?

A. Yes, I was in the tunnel and couldn't see them. The upper is so much higher, you couldn't see them unless you were outside.

(Testimony of Al Graham.)

Q. You left the tunnel and went further up the creek, did you?

A. No, Billy Moore was sent down after me, to come up.

Q. He came down to the tunnel after you to come up there where this trail building was taking place?

A. Yes, sir.

Q. And when you got up there you saw Burch and Kenzie, where?

A. I saw Burch on the flume and Mr. Kenzie down in the creek—he was smoking a cigar; a man was drilling there.

Q. When you went up to this place on the Lotta with Billy Moore what were you doing up there?

A. I was blasting up there and cleaned out brush there and making trails and rolling down rocks into the creek.

Q. Did Mr. Kenzie and his people still continue to work down there or did they leave?

A. They worked there, and when we hollered fire, they would get out of the creek.

Q. When you went to fire a blast, did you holler "fire"?      A. Always.

Q. And what did Kenzie and his people do when you hollered?

A. They got into that old development flume, behind that.

Q. That is the old flume on the left-hand side of the creek as you go up?      A. Yes, sir.

Q. Do you know whether that is referred to as the old Jualpa flume?

(Testimony of Al Graham.)

A. I think that is what they call it.

Q. How long did you continue to work there on the third of [489] October—what time in the day did you quit? A. To go up there?

Q. No, what time did you quit there? You say you were working there.

A. We worked until five—we were working nine hours then.

Q. You quit about five, did you?

A. Just about 5—we quit about a quarter to five, to get out of the place; it is hard to get out of there,—it takes half an hour to get out; we have to use a rope.

Q. Where were Mr. Kenzie and his people when you quit?

A. I think Kenzie and these other gentlemen went to town—I don't know where they went to.

Q. They went away from up there, did they?

A. Yes; that afternoon I didn't work in the tunnel. I worked on the side where the rest of the men were, in the afternoon. I only worked half a shift down in the tunnel a day.

Q. Now, you kept on working for Mr. Mackey up there until what time, after the third?

A. I have been working ever since.

Q. I believe later on, some time on the first or second of November, you were arrested up there with some other people, too?

A. I was arrested on the third of November.

Q. Between the third of October up to the third of November what work were you engaged in?

A. I was foreman up there on the flume and we



(Testimony of Al Graham.)

were working on the Parish, down working on the Parish.

Q. Who did you have working on the Parish up to about the third of November?

A. I was one, I was working myself— November?

Q. Yes, the third of November? [490]

A. Dan Reardon, Mike McKenna and a fellow named Malone was mucking there.

Q. What were those parties doing on the Parish #2 during that period of time?

A. Hammering there,—driving a tunnel there.

Q. Were they working in the lower tunnel on the claim or the upper tunnel?

A. McKenna was working in the lower and Reardon in the upper.

Q. I wish you would state what took place up there on the 2d and third of November, just prior to the time and up to the time you were arrested.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. On the 31st of October—I can't think of that fellow's name—Malone came up to me and said "They are stopping us from throwing the dirt down over the bank from the upper tunnel," and he said, "I wish you would come down," and I said I would be down in a minute, and when I got down there I met Kennedy and I said, "What's the matter here?" And he says, "You can't throw no dirt down here because we have to get this flume along here," and I

(Testimony of Al Graham.)

said, "We have to get the dirt out," and he said, "I don't care a damn if you never get it out," and I said, "We have word to get it out," and he said, "It ain't my fault," and I said, "I am paid to get the dirt out of here and have to get it out," and I came up and told Mr. Wettrick—he was there,—he was in Mackey's place.

Q. Mackey was then in Ketchikan?

A. Mackey was then in Ketchikan, yes, and he was in his place. He said, "I will go down and see about it," and the next morning, on the first of November, I comes down again and took [491] Mr. Lund, the deputy marshal at that time, and I said, "I want you to come down and see if you can't get them to cover their flume up so we can get our dirt out." They wouldn't do it, and the next morning, on the second, Reardon and Malone was arrested and that afternoon they were looking for me and couldn't find me, —I went over the hill and lost a couple of teeth, and the morning of the third, they caught me in Shady Bend and run me to town here.

Q. How long had you been dumping that muck down the hill there prior to the second or third day of November when Kennedy was objecting to your dumping it there?

A. Dumping it down that same place all the time, where we were starting an open cut there.

Q. And I understand he was claiming that interfered with their flume-line they were then building on the right-hand side of the creek as you go up the creek? A. Yes.

(Testimony of Al Graham.)

Q. Had you been dumping there before they built the flume at that point?

A. Yes, before they started the flume at all.

Q. And did you say that you told someone to cover up the flume, so you could keep on dumping?

A. They wouldn't cover—I said, “You had better cover,” and he said, “You cover it,” and I said, “It is your business to cover it up.”

Q. Who did you have that conversation with?

A. Kennedy.

Q. And then do you remember the day they did arrest you?     A. On the third of November.

Judge WINN.—That is all. [492]

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. What were your instructions when you went on this ground?

A. I went up there to work in the tunnel.

Q. Did you have any instructions?

A. To drive that tunnel.

Q. Who sent you there?

A. I was told by Mr. Mackey to do the work.

Q. What did he tell you about the other people coming on there?     A. Nothing at all.

Q. Not a thing?

A. Not a thing, at that time.

Q. When they got into trouble on the third of October you were called upon to come up the hill to join in?     A. Yes, sir.

Q. That was a surprise to you?

A. No; no surprise about it.

(Testimony of Al Graham.)

Q. You expected there was going to be trouble when you went down there to work?

A. No; there was nothing doing at that time—the 19th of September, there was nothing then at all.

Q. You didn't know there was any trouble coming?

A. No, not at that time; nothing around there.

Q. You didn't know there had been a location notice for a water right on that creek? A. No.

Q. Nothing about that? A. No.

Q. When was it you first heard there was going to be trouble up there?

A. I didn't know it until that time when they came after me. [493]

Q. How long had you been working for the California & Nevada Copper Company?

A. The 19th day of September.

Q. Had you been around down here?

A. Yes, sir.

Q. You knew there was a lawsuit up here in the courts over their locating a water right up there when you went up? A. No.

Q. Knew nothing about it? A. No.

Q. Hadn't heard of it? A. No.

Q. Whom were you working for?

A. I was working for Mr. Mackey at that time.

Q. What was the company you were working for?

A. The California & Nevada Copper Company.

Q. You were told to go down in this old tunnel along near the creek on the Parish #2 and drive?

A. Hunsucker showed me where to go.

(Testimony of Al Graham.)

Q. How much work did they propose to do there, did you know? A. No.

Q. How many feet did you drive in that tunnel while you were connected with it?

A. I couldn't say. Mr. Hill could tell you—he measured it.

Q. I mean approximately?

A. I suppose in one tunnel about nine feet.

Q. In the two tunnels?

A. In the two tunnels about eighteen feet.

Q. Right together, are they? How far apart are they? A. Six or seven feet.

Q. And about the 18th of September you got to throwing down [494] dirt?

A. I didn't throw dirt.

Q. Anybody throw dirt?

A. I suppose they were throwing dirt there before the flume came along there at all.

Q. Before they got up that far on the grade?

A. Before they had a grade there.

Q. The work started at the lower end first?

A. Yes; they started to cross at the lower end and they lowered it again.

Q. They lowered the grade at the upper end?

A. At the lower end.

Q. You have been working up there ever since?

A. Yes, sir.

Q. When was it you left the Parish lode and started up there to do the work? You were foreman in charge of the new flume from the Ebner dam around the hillside, were you not? A. Yes.

(Testimony of Al Graham.)

Q. When was it you went up there?

A. After Mr. Mackey went to Ketchikan, a little while after that.

Q. Before you—I will change that—you went back down on the Parish at the time this trouble came up about throwing the dirt down?

A. No; the man that was working there came and told me about the trouble and I went to see what was the matter.

Q. He went to the upper end of the Ebner property and told you to come down?

A. Yes; I was at the flume there.

Q. And Kennedy wanted you to dump your dirt somewhere except on their grade? [495]

A. Yes, there was no place to dump it except down over the bank—there is no place to dump.

Q. So you had to dump it on their grade—there wasn't any other place to do it?

A. I don't know whose grade it was—there was no other place to dump it.

Q. I mean the grade they were making there?

A. Yes.

Q. And then you were brought down here to the courthouse and arrested? A. Yes, sir.

Q. And Wettrick told you to quit dumping the dirt on their grade?

A. No, he didn't tell me anything of the sort.

Q. Did you quit? A. No, I didn't quit.

Q. Did you keep on dumping at the same place?

A. I was arrested and couldn't dump any more.



(Testimony of Al Graham.)

Q. After they got away—they were not kept in jail?

A. No, they didn't dump any more there—no.

Q. Was there a cabin up there when you got up there along the creek that the Alaska-Juneau people were using?

Judge WINN.—I object to that question—that cabin was never built on this claim at all.

Objection overruled. Plaintiff allowed an exception.

Q. There was a cabin there?

A. Yes, in Snowslide Gulch.

Q. That was before you went up there on the 19th of September?

A. Yes, there was a cabin there then.

Q. That is right in the gulch? [496]

A. It is pretty near in the gulch.

Q. It is up the creek from the gulch?

A. It ain't over ten feet, ten or fifteen or twenty feet from the side of the gulch.

Q. Over where Snow Gulch creek comes into Gold creek?

A. It is so close in the creek that they had to leave there—the snow came down by there,—they couldn't live in it.

Q. It wasn't over ten feet from there?

A. I couldn't say exactly. It is pretty close to the creek.

Q. Twenty?

A. Maybe in between ten and twenty. I never measured it off.

(Testimony of Al Graham.)

Q. You started to tell me and I thought you might have some definite idea about it. A. No.

Q. Did you know what they were doing there when you saw that cabin there? A. No.

Q. Nobody told you? A. No.

Q. You went to do the work on the Parish lode in utter ignorance of what was going on?

A. I was working in the tunnel—it is a long ways from there.

Q. You went in in utter ignorance of any proposed tunnel on the part of the Alaska-Juneau?

A. Yes.

Q. You didn't know anything about it?

A. No.

Q. You didn't expect anything? A. No.

Q. You didn't expect any trouble until it came? [497] A. No.

Q. You didn't know that the gang of men that were working there on the Lotta that you went up there to help on the third of October were up there for the purpose of blasting down on anybody, if they came there to finish up that flume-line?

A. There was no flume-line there.

Q. The proposed flume-line?

A. There was no proposed flume-line there at that time.

Q. None at all? A. No.

Q. No notice up in the creek?

A. I don't know about any notice.

Q. You hadn't heard of it?

A. There was nothing there at all; they tried to put

(Testimony of Al Graham.)

a dam across there.

Q. Before that day that they started to put the dam across there, you hadn't heard a thing about any trouble that was coming?      A. No.

Q. And when you went up on the hill of the Lotta, when the trouble came, before that time you hadn't any idea or any expectation of any difficulty?

A. No.

Mr. SHACKLEFORD.—That is all.

(By Judge WINN.)

Q. Prior to the time that Mr. Mackey and those people were arrested, which was the third of October, where had those people under Mr. Kenzie or Mr. Kennedy, or any of them, where had they been doing any work, prior to that, up there, in relation to where they were attempting to work on the third [498] of October?

A. Trying to work in the creek on the third of October, what they called a dam; it was further away than it is now—I should say maybe 70 feet, maybe **not that much.**

Q. Had they built any flume—that is, the Kenzie people?

A. Not that I know of—I wouldn't like to say. I don't think there was any flume at that time at all.

Q. There was no flume built there?

A. If there was a flume built, it must have been built below Snowslide Gulch—that is where the two tunnels are.

Q. On that day they made a jump from their work way down on Snowslide Gulch and came up about on

(Testimony of Al Graham.)

the Lotta claim?

Objected to as leading. Objection sustained.

Q. Prior to that time they had been working down near Snowslide Gulch on this flume? A. Yes.

Q. And was that the first you had ever seen Kenzie and his people come up there on the Lotta claim or where they undertook to put the dam in?

A. Yes, I think I saw Kenzie—I wouldn't say for certain—and that other man called—I came out of the tunnel. I know it was Kenzie but I wouldn't be sure of the other man—Burch they called him.

Q. Now, I will ask you if you know of any work that was done by those people under Kenzie on the day or the night that Mackey and those people were arrested—in the first place, when they put in that box, where did they put it in? A. In the creek.

Q. What place?

A. About fifty or sixty feet, maybe a little more, from where the dam is now. [499]

Q. Do you know what time of the day that was done?

A. In the evening between eight and twelve; somewhere between that time.

Q. That would be night?

A. Yes, sometime in the night-time.

Q. Had they the flume built that far up at that time? A. No.

Q. About how far down was it, where they had built any flume at that time, up to that date,—do you remember?

A. I don't think they had built any flume at all.

(Testimony of Al Graham.)

Q. You said something about their changing their grade, the people working under Mr. Kenzie. I wish you would explain to the Court what you mean by that?

A. It was a grade like them steps. One place was too high and they had to lower it down like that other step, that lower tunnel, to compete with their dam. I suppose maybe it was too high. I don't know.

Q. What was their purpose in changing that grade, if you know? A. I suppose to get water.

Q. In the first place, they started to take the water further up the creek? A. Yes.

Q. And then, they came down, further down the creek and eventually built the dam they have there now? A. Yes, sir.

Q. Now, what interference, if any, did you and the people working with you cause with the work Kennedy was carrying on there—in what way was your work interfering with theirs?

A. After we were blasting we were taking our rock out of the tunnel. [500]

Q. Were you doing any other work besides dumping, to interfere with anything Kennedy was trying to do? A. No, that is all.

Q. When the stuff was dumped down that hill, where would it go to?

A. It would go down to the bottom of the creek.

Q. You requested them, I think, to put a board there. Did you know whether or not they had any boards there? A. No.

Q. They didn't put any? A. No.

(Testimony of Al Graham.)

Q. Do you know whether they had any on the ground or not—did you see any? A. No.

(By Mr. SHACKLEFORD.)

Q. On the third of October you say you saw these people up here, putting some logs across the creek?

A. Yes, sir.

Q. To build their dam—when did you first see those logs?

A. I saw some logs up on the sidehill.

Q. When did you first see the logs?

A. I couldn't tell you the exact date.

Q. It was some time before that, wasn't it?

A. Yes, a few days before that.

Q. How many?

A. I couldn't tell you how many.

Q. You couldn't say? A. No.

Q. There was a tunnel started down Gold Creek here on the Parish claim before you went up there, wasn't there, by the Alaska-Juneau people? [501]

A. I don't know whether it was started then or not. I couldn't say. It might be started a year before that.

Q. It was there when you went up?

A. There was a tunnel there, yes—I don't know how far it was in. I was never over it until later on.

Q. That is the tunnel just above the present right of way of the flume-site?

A. It is around Snowslide Gulch—

Q. I mean that tunnel is above the place where the present tunnel for a flume-line goes into Snowslide Gulch, a few feet above?



(Testimony of Al Graham.)

A. There is two tunnels there; there is one on the same grade as that flume and one above that.

Q. The one above it was there when you went up there?

A. I don't know about that. There was a tunnel there. I don't know how far it was in.

Q. It was one of those two tunnels?

A. There was somebody working there—

Q. On the 19th of September? A. Yes, sir.

Q. When you went up there? A. Yes, sir.

Q. But you don't know whether that is on the Parish or one of the other claims?

A. No, I don't know where the stakes are.

Q. (By Judge WINN.) You don't know what claim that cabin was on Mr. Shackelford questioned you about? A. No.

Witness excused. [502]

**[Testimony of William Middleton, for Plaintiff.]**

WILLIAM MIDDLETON, a witness called and sworn in behalf of the plaintiff, testified as follows:

**Direct Examination.**

(By Judge WINN.)

Q. When did you come to Juneau?

A. On July 28, 1910.

Q. Have you ever done any work up on what has been referred to all the way through this case as the Ebner property? A. Yes.

Q. When did you first go to work there?

A. On September 13th.

Q. September 13, 1910?

A. September 13, 1910.

(Testimony of William Middleton.)

Q. Where did you commence work up there at that time?

A. It was up near the intake, on the flume grade.

Q. That is the high line flume? A. Yes, sir.

Q. On the left-hand side of the creek as you went up? A. Yes, sir.

Q. Do you know where there is a brushed-out line across the creek, commencing at a little cabin on the right-hand side of Gold Creek as you go up the creek—do you know where there is a little old cabin?

A. Yes.

Q. Now, I will ask you if you have ever observed a brushed-out line there that runs from the neighborhood of that old cabin down toward the creek?

A. Yes, I have.

Q. Did you ever do any work toward brushing that out, yourself? A. No.

Q. Now, I will ask you if you know Mr. Kenzie.

A. Yes. [503]

Q. Did you ever see the man that you afterwards found out to be Burch? A. I have.

Q. And have you ever seen Mr. Kennedy, who was assistant superintendent under Mr. Kenzie?

A. No, I don't believe I ever have.

Q. I will ask you if you know where the air-compressor is up there on the Ebner property?

A. Yes, I know where it is.

Q. I will ask you if you ever saw any people up there representing Mr. Kenzie's people at work, on or about any portion of what was called the Parish #2 claim and in or about where this line is cleared

(Testimony of William Middleton.)

out across the creek at the old cabin you have testified concerning?     A. Yes, I have.

Q. When did you first see anyone up there?

A. It was about the last week in September.

Q. Where did you see them up there?

A. Why, I saw them—it was above the lower tunnel there—I saw them putting through the flume grade.

Q. Putting through a flume grade?

A. Yes, sir.

Q. Below the lower tunnel on what is known as the Parish #2 claim?

A. No, it was above the lower tunnel.

Q. Do you mean up above it on the bank or up above it on the creek?     A. It was on the bank.

Q. And where was it with reference to this lower tunnel on the Parish—up or down the creek?     [504]

A. It was—

Q. Or was it just up over the tunnel?

A. It was just over the tunnel.

Q. That was down on what you supposed to be the Parish #2?     A. Yes, the Parish #2.

Q. Did you ever see them up about this line you say was brushed out across the creek from the old cabin and in and about or near the air-compressor of the Ebner property—did you ever see any of them up there?     A. No, I never have.

Q. On the 26th or 28th of September or the first or third of October, did you see any people up there of Mr. Kenzie's?     A. Yes, on September 28th.

Q. What took place up there to your knowledge

(Testimony of William Middleton.)

and what did you see?

A. Well, I was sent down there by Al Black to blast in case any of Kenzie's men rolled any rocks down toward the creek, and I went down, and as soon as they did, I set a blast off and shortly after that Kenzie and Burch came up and asked who fired that shot, and Al Black came down just about that time and said "Middleton," and pointed to me, and Kenzie asked me why I fired that shot without giving them warning and I said I did give warning.

Q. Did you? A. I did.

Q. What did you do in the way of giving them warning? A. I yelled "fire."

Q. What other conversation that you heard took place between Black and Kenzie at that time?

A. Black said, "I am the one to see about that because I told [505] him to set this blast off," and Kenzie said, "You are too old a hand at that, Al; you ought to know better," and Al said, "Well, you had better see Mackey about that; he is the one that is giving me orders," and he sent me up to the old blacksmith-shop then, and that is all the conversation I heard.

Q. Do you know anything about a road that leads from the regular Basin road, which runs on the left-hand side of Gold Creek going up—any road leading from that main road down to the air-compressor on the Ebner property? A. Yes.

Q. Did you ever see any notice posted up there?

A. I have.

Q. Do you remember about what time that notice

(Testimony of William Middleton.)

was posted up?

A. It was prior to the 28th of September.

Q. Did you see what that notice contained, substantially—did you read it?      A. Yes.

Q. What did it state?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. It was a warning for anyone to keep off the property there—not to trespass upon the property.

Q. Did you ever see any fence put up across that road?      A. Yes.

Q. When was that put up, approximately?

A. That was prior to the 28th of September.

Q. Were you up there on the third of October working in and about this place or were you on the high line flume?

A. I was up on the high line flume. [506]

Q. And you didn't go down to where that rumpus took place on the third of October?      A. No.

Q. I don't believe you know anything about what took place at the time that Al Graham was arrested and some other people there, Wettrick and some of them—you were not down there at that time?

A. No; I was not down there.

Q. Where were you working then?

A. I was over near the flume grade.

Q. Who was this man Hunsucker they speak of—what was he doing, what was his business?

A. He was watchman.

(Testimony of William Middleton.)

Q. Of what property?

A. Of the Ebner mine.

(By Mr. SHACKLEFORD.)

Q. When did you first go on the property?

A. I went on the last week in July—not to start work, though.

Q. Were you here when the injunction suit was tried, about the first of September? A. No.

Q. Were you in town? A. No, sir.

Q. Were you up at the mine? A. No.

Q. Were you out of the city? A. In Seattle.

Q. You went below and then came back?

A. Yes, sir.

Q. When did you get back?

A. I got back here about the 11th of September.

[507]

Q. Then, what did you start to do?

A. I started to work on the 13th of September.

Q. What were you assigned to do at that time?

A. I was assigned to work on the flume grade there, carrying stulls and pick and shovel work.

Q. When did you first hear any conversation or gain any information about the proposed building of a flume from somewhere in the vicinity of the Lotta lode down the creek by the Alaska-Juneau?

A. As soon as I arrived in town—the first week in September.

Q. What was the cause of putting in a gate and notice across this roadway that connects the Basin wagon road with the compressor plant?

A. Why, the cause was there was some lumber



(Testimony of William Middleton.)

brought up there by the Treadwell people.

Q. The Alaska-Juneau people? A. Yes.

Q. And it was taken down that roadway and landed?

A. No, it was not taken down; it was put on the road there.

Q. When were the logs put down there that they made the dam with afterwards?

A. That was about October first.

Q. They were handling the logs on the 28th?

A. They put the logs on the road and they started to slide them down about the 28th of September, I should say.

Q. Did you notice a tunnel near the boundary of the Parish #2 and the Taku Queen, when you went up there in September?

A. I don't remember now.

Q. Did you notice a new cabin down there?

A. Yes, I noticed a cabin.

Q. I presume you noticed very shortly after that they were [508] driving a tunnel? A. Yes, sir.

Q. Then, a day or two after you got up there?

A. It was shortly after; yes.

(By Judge WINN.)

Q. This lumber that you say was put up there prior to the 28th of September, was put on the road-side,—do you mean the regular wagon road that goes up the Basin from Juneau? A. Yes.

Q. And they didn't commence sliding it down the hill until what date?

(Testimony of William Middleton.)

A. I saw them sliding it down about the 28th of September.

Q. I believe you said that notice up there was posted prior to the 28th? A. Prior to the 28th.

(By Mr. HELLENTHAL.)

Q. How long prior?

A. I should say it was about two or three days.

Q. That is the time the gate was built?

A. Yes, about the same time.

Q. It was about the 26th of September the gate was built?

A. Well, I should say it was about the 26th.

(By Mr. SHACKLEFORD.)

Q. You knew there was a water notice up there where they started to build their dam from—a location notice? A. No, I didn't know.

Q. How did you locate your gang here just above them on the Lotta lode on the 28th of September—how was that gang located on the Lotta unless they knew from the water notice [509] that the dam was going to be put in about that place?

Judge WINN.—We object to that as calling for a conclusion of the witness.

Objection overruled. Plaintiff allowed an exception.

Q. By your men I mean the California & Nevada Copper Company men?

A. Were put to work where?

Q. Just above the place where the other people came to start their dam,—you all knew, you knew yourself about where that dam was going to be put

(Testimony of William Middleton.)

in, before it was put in?

A. No, I didn't know that.

Q. You didn't know that?      A. No.

Q. As soon as they found out that they were there working on the dam, Al Black sent you down to fire the shot?

A. He sent me down September 28th,—that was before they put in the dam.

Q. They had been working there?

A. They were sliding lumber down the hill—they hadn't begun the building of the flume yet.

Q. What instructions did Black give you?

A. He told me if they brought any lumber down, if they came anywhere near the creek, to scare them off after giving them warning.

Q. After giving them warning?      A. Yes, sir.

(By Judge WINN.)

Q. You heard the testimony of Al Graham.

A. Yes, sir.

Q. Are you the same Middleton he referred to about bringing steel down to some place where he was working on the tunnel? [510]      A. Yes.

Q. Where was Al Graham when you carried steel down there?

A. He was working in the lower tunnel.

Q. On what you supposed to be the Parish #2 claim?      A. Parish #2.

Q. Do you know of the building of any trails, working on any trail over on the Lotta claim, in order to get down to this tunnel where Al Graham was working?

(Testimony of William Middleton.)

A. Yes; I saw Ed Seitz putting in a trail through there.

Q. What time was Ed Seitz working on that trail?

A. It was about the last of September. The exact date I don't remember.

(By Mr. SHACKLEFORD.)

Q. Whom were you working for up there?

A. I was working for Mackey.

Q. You know you were working for the California & Nevada Copper Company, don't you?

A. Yes.

Q. When Kenzie went up there with Burch, who was with them—do you know?

A. They were alone that day.

Witness excused.

Whereupon court adjourned until to-morrow, June 1, 1911, at 10 A. M. [511]

June 1, 1911—10 A. M.

**[Testimony of Mike McKenna, for Plaintiff.]**

MIKE McKENNA, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. What business do you follow; what sort of labor principally? A. Prospecting and mining.

Q. You know where the Ebner group of mines are up Gold Creek, near Juneau? A. Yes, sir.

Q. In the summer of 1910 did you do any work up there, under Mackey? A. Yes.

Q. You didn't do any work under Tripp up there, did you? A. No.

(Testimony of Mike McKenna.)

Q. What time in the summer of 1910 did you commence work up there under Mackey?

A. I believe it was on the 15th of September.

Q. Where on that property did you commence work and what were you doing?

A. I started to work on the tunnel on the Parish #2 claim.

Q. You have heard some of the testimony here in court yesterday—you heard some of the witnesses testifying?

A. A very little; it was late when I got here yesterday.

Q. Do you know whether or not on this Parish #2 claim there are now two tunnels put in by Mr. Mackey—one is called the lower and one the upper tunnel? A. Yes.

Q. Which one of those tunnels did you work on?

A. The lower tunnel. [512]

Q. You commenced there about what day working in that tunnel?

A. I believe it was the 15th of September.

Mr. SHACKLEFORD.—I object, for the reason that it appears from the pleadings in this case that ouster is alleged to have occurred in the month of August.

Objection overruled. Defendant allowed an exception.

Q. You commenced there about what date and then continued to work until what date?

A. I think it was the 15th of September.

Q. The 15th of September and worked up to what

(Testimony of Mike McKenna.)

time? A. The 16th of October.

Q. What were you doing in the tunnel—driving a tunnel? A. Yes, sir, driving a tunnel.

Q. Was there anybody working there with you during this time?

A. Yes, there was several working with me from time to time.

Q. Do you remember the names of some of them?

A. Al Graham; Wm. Middleton worked a great deal there; Dan Reardon worked some there, and Wm. Moore was in there—I forget whether he worked much or not. And Ed Seitz worked there some.

Q. Now, do you know where there is a brushed-out line up there on that property that runs from a little old cabin on the right-hand side of the creek as you go up and the line is brushed out down the creek and over across the creek—you know where that line is? A. Yes; where that old cabin is?

Q. Yes. A. Yes.

Q. Now, I will ask you while you were working on this lower tunnel between the dates that you have testified concerning, as to whether or not you saw anybody working up about where this line is cleared out and also up above it on the creek [513] that is, I mean a little further up the creek?

Mr. SHACKLEFORD.—Same objection to all this testimony.

Objection overruled. Defendant allowed an exception.

Q. Did you see anybody working there, that is,



(Testimony of Mike McKenna.)

any people that were working under Mr. Mackey?

A. Yes.

Q. Who did you see working there?

A. I saw John Carlson, Ed Seitz, Al Graham, Wm. Moore, Dan Reardon and several others.

Q. What were they doing when you saw them working there?

A. Some of them were starting to face up a tunnel and some were building trails, and the like.

Q. Where would that trail lead to, from what point to what point, that they were building?

A. The new trail?

Q. Yes.

A. It was to be a short trail to the lower workings of the Ebner mine,—the Ebner mill.

Q. When you say the lower workings, you mean the workings on the Parish #2?

A. No, I mean the mill working at the old Ebner camp.

Q. You mean it would be the old workings of Mr. Ebner near the road, down to what place?

A. Down to where I worked.

Q. Down to where you worked on what claim?

A. On the Parish #2.

Q. Do you remember about how often you saw these people working on that trail during the time you were working on the lower tunnel?

A. They were working there the most of the time I was there.

Q. Do you remember seeing any of them there on the third day [514] of October, 1910? A. Yes.

(Testimony of Mike McKenna.)

Q. Where were you working on the third day of October, 1910?

A. On that tunnel on the Parish #2 down on the back of the creek.

Q. What time did you go to work down there on the third in the tunnel?

A. The mining work between 7 and 8 o'clock, I think.

Q. Where were you boarding at that time?

A. At the Circle City Hotel.

Q. Then, you went to work from the Circle City Hotel?

A. Yes; went up to the old camp and got my steel and came down the trail to work every morning.

Q. Was Kenzie or any of his people up there on the property on the morning of the third when you went to work? A. No.

Q. Did you see anything that took place up there on the morning of the third between morning and noon or in the afternoon? A. Yes.

Q. What did you see?

A. I came out for steel and I saw a man up the creek and heard men blasting up on the sidehill, hollering "fire," and those men in the creek were putting in a dam there, trying to put in a dam.

Q. Did they have any part of the piece of flume constructed at that time, the men down on the creek?

A. No, I think not, not before that,—no, I think not.

Q. You know Mr. Kenzie? A. Yes, sir. [515]

Q. Did you see him up there that day or were you

(Testimony of Mike McKenna.)

close enough to recognize him?

A. Yes, I saw him up there.

Q. Well, when these people on the sidehill fired—I mean blasted and hollered “fire”—what did these people down the creek that were with Kenzie do?

A. They went away to a safe place somewhere—got in safety.

Q. Do you know whether or not Kenzie’s people did any blasting down there on the creek that day?

A. I believe they did.

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. You are quite certain of the date you went up there? A. Yes, I believe it was the 15th.

Q. Where did you get that date from?

A. From memory.

Q. You didn’t keep any account or anything?

A. No, only memory.

Q. Your books of the company will show when they commenced? A. I didn’t see the books at all.

Q. I say they would show? A. I suppose so.

Q. You were paid all right—for the right time?

A. Oh, yes.

Q. Now, when you went up there, as you passed Snowslide Gulch on the way up, you noticed a new cabin there, didn’t you?

A. Yes, I believe there was a cabin there.

Q. And there was work that had been done in the tunnel, a little distance above the cabin and up the creek at that time, hadn’t there? [516]

A. I think they were starting a tunnel there.

(Testimony of Mike McKenna.)

Q. I am speaking of the Alaska-Juneau?

A. Yes, I know.

(By Judge WINN.)

Q. Do you know who lived in that little cabin that was built down the creek there—do you know a man by the name of O. M. Harry?

A. Yes, I saw him there; yes.

Q. A man that walked lame?

A. Yes; I see him there.

Q. How long did this man, O. M. Harry, to your knowledge—I mean how long do you know that O. M. Harry stayed there in that cabin that was built, that Mr. Shackelford questioned you about?

A. I don't know; I was working for the Bear Harbor mine before I came up here to work and how long he was there I can't say. I was not here.

Q. You don't know what mining claim that cabin was built on,—you never ran out the lines to find out what mining claim that cabin was built on?

A. No, I never ran out any lines; no.

(By Mr. SHACKLEFORD.)

Q. You people worked there in the daytime?

A. Yes, sir.

Q. At night you all went up to the upper end of the Ebner property to the bunk-house up there?

A. No, I never went up—I came right down to town.

Q. The men that were employed there either went to town or went to the bunk-house on the upper end of the Ebner property? A. Yes. [517]

(Testimony of Mike McKenna.)

Q. None of them stayed on the Parish claim at night?

A. I think they were working a night shift on it a while; yes.

Q. While you were there?

A. While I was there.

Q. That was after the third of October?

A. About that time, some time.

Q. It was after this trouble arose?

A. Yes, I know they were working on the night shift there for a while, but I didn't work night shift.

Q. Who was on that night shift?

A. Either Seitz or this Carlson.

Q. Whenever a man was through his work, why he didn't stay on the claim—you had no cabin on the claim? A. I don't know where he stayed.

Q. There was no place to stay and sleep on the Parish claim?

A. He could stay all night and work if he wanted to.

Q. When you were through your work?

A. There was an old cabin up there, I think.

Q. That was occupied, I suppose?

A. I don't know.

Q. As a matter of fact, you know that the men that worked there didn't sleep on the claim, don't you? A. I suppose not.

(By Mr. SHACKLEFORD.)

Q. That is the old cabin on the Lotta, the old cabin up on this bench here, near the corner of the Lotta and the Parish. That is the cabin you are talking

(Testimony of Mike McKenna.)

about? A. I think so.

Q. That is an old cabin?

A. That is an old cabin.

Q. It is not in a state of repair?

A. No, it is not.

Witness excused. [518]

**[Testimony of Dan Reardon, for Plaintiff.]**

DAN REARDON, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. What is your name? A. Dan Reardon.

Q. What is your business, generally?

A. Prospecting, mining.

Q. How long have you lived in southeastern Alaska? A. About five years.

Q. Do you know the property that is referred to as the Ebner property up Gold Creek from Juneau?

A. Yes, sir.

Q. Did you ever do any work up there?

A. Yes.

Q. Was that in 1910? A. Yes, sir.

Q. You were working under Mackey?

A. Yes, sir.

Q. About what time did you go to work up there?

A. I went to work on October first.

Q. On October first? A. Yes, sir.

Q. Where did you go to work on the property?

A. Grading on the flume right opposite the Ebner mill, on the left-hand side of the road as you go north.



(Testimony of Dan Reardon.)

Q. You first went to work on the first day of October on the high line flume Mackey was building?

A. Yes, sir.

Q. Did you ever do any work any other place on the property besides on this high line flume? [519]

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial—the statements in the pleadings and the admissions of the parties being such as to prevent proof after the date the witness was employed, and all the other questions come in under this objection.

Objection overruled. Exception allowed.

Q. What other places did you work besides on the high line flume?

A. I drove a tunnel on the Parish #2.

Q. When did you commence work on that?

A. Why, I couldn't say just exactly the date—it must be along the ninth or tenth of October.

Q. Who were you working with, if anyone?

A. Maloney was the man that was helping me.

Q. You were working on what is called the lower or upper tunnel on the Parish #2?

A. The upper tunnel.

By the COURT.—The upper tunnel—does that mean up the creek or up the bank?

A. It is about probably 100 feet above the lower tunnel.

By the COURT.—Up the bank?

A. Yes, up the bank.

Q. Is it any further up the creek than the lower tunnel, or is it just over it, do you remember?

(Testimony of Dan Reardon.)

A. It is a little diagonal.

Q. Where were you working on the third day of October?

A. I think I was—well, I worked some on the grade where this flume was and then I worked the balance of the time on what they call the Lotta patented claim.

Q. You are the same Dan Reardon that Mr. Black referred to in [520] his testimony, as having gone over and gotten you and some others that morning and put them to work there on the Lotta?

A. Yes.

Q. What time did you go to work there on the Lotta that day?

A. Why, it must be half-past nine o'clock or ten.

Q. Do you know Mr. Kenzie, the superintendent of the Treadwell and the superintendent of the Alaska-Juneau?

A. Yes, sir, I have seen him.

Q. Did you see him up there that day?

A. Yes, sir.

Q. Did you see a man up there that you afterwards found out to be a man by the name of Burch?

A. Yes, sir.

Q. With Kenzie?      A. Yes.

Q. What were they doing up there that day?

A. Kenzie was down on Gold Creek on top of a big boulder and another man sitting by the side of him using a single jack driving a hole in the rock.

Q. Did Kenzie's people do any blasting down there while you were over on the Lotta?

(Testimony of Dan Reardon.)

A. Two shots, I think, two blasts.

Q. They fired two blasts? A. Yes.

Q. Did they sing out and give you people warning when they fired their blasts?

A. Yes, I heard them holler up that they wanted to fire two blasts down below.

Q. Now, were the people you were with firing some blasts up above them on the hillside?

A. Yes, sir. [521]

Q. How about you people giving warning when you fired blasts?

A. They always gave warning, every time.

Q. Did you see what the people under Kenzie did when you people gave the alarm of firing blasts?

A. Well, part of the time I could see them and part of the time I didn't see them.

Q. What would they do—get out of the way or stay in the same place?

A. They generally got out of the way; yes.

Q. How long were you working there on the third?

A. That day of the third I worked until about five o'clock, I think.

Q. What became of Kenzie's people?

A. Well, they were trying to put in a dam down there but they couldn't very well do it, and along in the afternoon there was four or five men on the other side of the creek pulling a few poles down there—they didn't do any more work down in the bed of the creek until late along in the evening.

Q. They were over there pulling down some poles from the big wagon road? A. Yes, sir.

(Testimony of Dan Reardon.)

Q. That was on the third day of October. Do you remember the next day, what work you did? Did you remain working on the Lotta or go back to the tunnel or over on the high line flume the next day, do you know? A. On the high line flume; yes.

Q. How long did you continue to work on the high line flume?

A. A matter of two or three days more. I went into this tunnel along about the tenth—ninth, tenth or eleventh of the month. [522]

Q. What tunnel do you mean?

A. The Parish = 2.

Q. Is that the upper or lower tunnel on the Parish = 2? A. The upper tunnel.

Q. Then, how long did you continue to work on that upper tunnel?

A. I continued there until the first day of November.

Q. Do you remember along about that time, the latter part of October, or the first of November, if some people doing some work down below you on some kind of a grade or building a flume or something of that kind?

A. Yes, they were grading for a flume and building a flume, both.

Q. Now, when you worked in this upper tunnel, what did you do with your muck?

A. I threw it down the hill into the creek.

Q. Did they dump it down the creek all the time you were working there up to some time that you had a row with Mr. Kennedy?

(Testimony of Dan Reardon.)

A. Two shots, I think, two blasts.

Q. They fired two blasts? A. Yes.

Q. Did they sing out and give you people warning when they fired their blasts?

A. Yes, I heard them holler up that they wanted to fire two blasts down below.

Q. Now, were the people you were with firing some blasts up above them on the hillside?

A. Yes, sir. [521]

Q. How about you people giving warning when you fired blasts?

A. They always gave warning, every time.

Q. Did you see what the people under Kenzie did when you people gave the alarm of firing blasts?

A. Well, part of the time I could see them and part of the time I didn't see them.

Q. What would they do—get out of the way or stay in the same place?

A. They generally got out of the way; yes.

Q. How long were you working there on the third?

A. That day of the third I worked until about five o'clock, I think.

Q. What became of Kenzie's people?

A. Well, they were trying to put in a dam down there but they couldn't very well do it, and along in the afternoon there was four or five men on the other side of the creek pulling a few poles down there—they didn't do any more work down in the bed of the creek until late along in the evening.

Q. They were over there pulling down some poles from the big wagon road? A. Yes, sir.



(Testimony of Dan Reardon.)

Q. That was on the third day of October. Do you remember the next day, what work you did? Did you remain working on the Lotta or go back to the tunnel or over on the high line flume the next day, do you know? A. On the high line flume; yes.

Q. How long did you continue to work on the high line flume?

A. A matter of two or three days more. I went into this tunnel along about the tenth—ninth, tenth or eleventh of the month. [522]

Q. What tunnel do you mean?

A. The Parish #2.

Q. Is that the upper or lower tunnel on the Parish #2? A. The upper tunnel.

Q. Then, how long did you continue to work on that upper tunnel?

A. I continued there until the first day of November.

Q. Do you remember along about that time, the latter part of October, or the first of November, of some people doing some work down below you on some kind of a grade or building a flume or something of that kind?

A. Yes, they were grading for a flume and building a flume, both.

Q. Now, when you worked in this upper tunnel, what did you do with your muck?

A. I threw it down the hill into the creek.

Q. Did they dump it down the creek all the time you were working there up to some time that you had a row with Mr. Kennedy?



(Testimony of Dan Reardon.)

A. Yes, dumped it down every day or every second day.

Q. Was there any other place to dump it?

A. No, sir.

Q. You know a Mr. Kennedy, who is an assistant superintendent of the Treadwell Company and also the Alaska-Juneau Company?

A. Yes, I know him.

Q. Did you see him up there at any time along about the latter part of October or the first of November? A. Yes, I see him there the 31st of October.

Q. Did he have any men doing any work under him?

A. Why, yes; he had men building the flume underneath there where we were dumping down this muck. [523]

Q. Did you have any conversation with Kennedy yourself or any of his men?

A. Why, Kennedy and I think it is the foreman of the flume and some other men came up to where we were working and told us not to dump any more stuff down there.

Q. Did they say why? What was the conversation?

A. Because we were busting up his flume. They had the bottom of the flume laid but no stulls yet laid on the flume, and they claimed it was damaging their flume.

Q. Whom did he make that claim to or did he have a conversation with?

A. He had a conversation first with Maloney, I

(Testimony of Dan Reardon.)

think, and afterwards me and him had a talk.

Q. Just what was said between him and Maloney there in the first place that you saw?

A. I couldn't hear what was said first between him and Maloney.

Q. How much of it did you hear?

A. I told him that we had orders to throw the stuff down there and for him to go and see Al Graham or the engineer, and he said that he wouldn't do anything of the kind, that it was up to us to do that, and I told him I would still continue throwing the stuff down, and he said he would have me arrested if I did, and he said it was a continuation of the same thing that happened a month before with Mackey and Al Black and those other fellows.

Q. Now, on that date that you had the conversation with Kennedy were you dumping the muck in the same place you had been dumping it or did you dump it in a new place?

A. Dumping it in the same place.

Q. Was that about all the conversation you remember, or was there anything else? [524]

A. He went down the grade and came back again and Maloney went up and told Graham about this trouble, and I asked him if he couldn't leave this place open, that we would throw the stuff down about every second day,—leave a place there or cover it over, and he said, "No"—we could cover it over if we wanted to; he wouldn't do it.

Q. Do you remember seeing a deputy marshal up there named Lund? A. Yes, I saw him.

(Testimony of Dan Reardon.)

Q. What was he doing up there?

A. He was standing down on the flume for a little while and he came up after this conversation and told me I had better not dump any more stuff down there.

Mr. HELLENTHAL.—We object to that. I insist he first show that Mr. Lund had any connection with the Alaska-Juneau Company.

By the COURT.—On the assurance of counsel that he would furnish the evidence that he has promised, the objection will be overruled and you can move against it if he does not furnish it.

Q. What was this man Lund doing?

A. He was down on the flume, and he came up and he told me and Maloney we had better not throw any more stuff down there, that we were busting up that flume, and I told him we were sent here to do it and asked him if he had a warrant that we would go down town, but we were ordered to do this and couldn't quit unless we were told to quit, and the next day he came up and arrested both of us.

Q. Do you remember about what part of the time he stayed down on this flume—what flume was it he was on?

A. This was the flume that the Alaska-Juneau Company or the Treadwell was building. [525]

Q. Was he down there with these Alaska-Juneau people? A. Yes, sir.

Q. Did you see him come up there yourself any more than once that day or did he come oftener?

A. He came up that one time.

Q. That you saw him? A. Yes, sir.

(Testimony of Dan Reardon.)

Q. How many people were working there with you on that date? A. There was only one.

Q. At that place? A. Yes.

Q. Who was that? A. That was Maloney.

Q. The next day you say you were arrested—did Lund arrest you? A. Yes, sir.

Q. Did he have any warrant or show you any papers? A. No, sir.

Q. Did he have any papers or show you any papers when he came up there to arrest you?

A. I asked him if he had a warrant, and he threw his coat open and showed me his star and said, "Here it is."

Q. Said his star was his warrant? A. Yes, sir.

Q. Was there anyone else with you when he arrested you—did he arrest anybody else at the same time? A. He arrested me and Maloney; yes.

Q. Did he serve any papers on Maloney?

A. No, sir.

Q. Did he say anything to Maloney in your presence when he arrested Maloney?

A. No, he didn't say nothing. [526]

Q. At the time that you and Maloney were arrested, was there anybody else mucking out there with you or working with you on the tunnel?

A. Not at that time; no.

Q. When he took you and Maloney away then, you didn't leave anybody there to work in that place, did you?

A. Not that I know of. I was arrested and I couldn't say.

(Testimony of Dan Reardon.)

Q. I mean before he brought you down,—was there anybody else working in the tunnel with you and Maloney at the time Lund arrested you?

A. No, there was nobody else.

Q. You spoke of Graham. Who was Graham—was he in any way connected with this work you were doing there running the tunnel?

A. Why, yes, somewhat—he was the foreman at the time. We were working in different places, you see.

Q. Do you know Fred Wettrick? A. Yes, sir.

Q. Do you know where Mr. Mackey was at the time you were arrested?

A. Not any more than what I seen in the papers that he was in Ketchikan.

Q. Was he up there at work on the property—Mr. Mackey—at that time?

A. At the time I was arrested?

Q. Yes. A. No, he was not there at that time.

Q. Did you see Wettrick up there at any time?

A. Yes; I see Wettrick up there several times—pretty near every day, as far as that is concerned.

[527]

Q. Did you see him up there the day Lund came up and told you people that you had better quit dumping, etc., down there—did you see Wettrick there that day? A. I am not sure, that day.

Q. Did you see him the day you were arrested?

A. I saw him the day before.

Q. Were you present at any time that Wettrick had any conversation with any of these people that

(Testimony of Dan Reardon.)

were working under Kennedy?

A. Well, I was right close up but I didn't hear the conversation.

Q. You didn't hear the conversation? A. No.

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. You told Mr. Kennedy that you had been instructed to dump your dirt there? A. Yes.

Q. Who instructed you to dump it there?

A. Why, I was instructed by the engineer.

Q. Who was the engineer?

A. By Mr. Wettrick and Mr. Graham.

Q. Why did they instruct you to dump it there, do you know?

A. Well, no, I don't know. I had to dump it there; we were driving a tunnel.

Q. That was at the mouth of the tunnel?

A. That was at the mouth of the tunnel.

Q. You got your instructions to dump your dirt right there?

A. We had to dump the dirt whenever the tunnel was full.

Q. But why do you reckon you were instructed—if that was the natural place to dump it why did they give you any specific instructions to dump it there?  
[528]

A. There was no other place to dump it.

Q. That is the reason I am asking you the question—but they did tell you to be sure to dump it there? A. I couldn't dump it any other place.

Q. They told you to dump it there too—in addition



(Testimony of Dan Reardon.)

to being the only place you could dump it, they told you to dump it there?     A. Sure thing.

Q. And that was before you had this trouble with Kennedy?     A. Why, yes, a long time before that.

Q. They expected Kennedy and his crew along there after a while, didn't they?

A. I don't know anything about that.

Q. But they told you to dump it right there—Wetrick and Graham?

A. Not necessarily, because we had to dump it there to drive the tunnel.

Q. But you had a conversation with them in which they told you to dump it there, didn't you?

A. Yes, sure.

Q. And that was before Kennedy had come along?

A. That was when the trouble came up—they told me to dump it there, that we had to dump it there.

Q. That was before you had the conversation with Kennedy?

A. I didn't get no instructions when I started there, where to dump it.

Q. But before Kennedy got there, before you had trouble or talk with Kennedy that day, they had told you to dump it there?

Objected to. Objection overruled. Plaintiff allowed an exception. [529]

Q. Had they or had they not told you to dump the dirt right where you were dumping it before you and Kennedy had the conversation or afterwards?

A. Afterwards, not when I started there. I didn't get no instructions where to dump it when I started there.

(Testimony of Dan Reardon.)

Q. And it was after you had your talk with Kennedy that day that Wettrick told you to dump the dirt in this same place that you were dumping it?

A. Yes, sir.

Q. Then why did you tell the Court a minute ago that in your conversation with Kennedy you told Kennedy that they had ordered you to dump it there before that time?

A. Sure; because I will tell you how that came in—when Kennedy ordered me first not to dump any more stuff down there I quit—I didn't want to bust up the flume—I quit then for a few hours and I got instructions from Wettrick to give them orders to either cover that over or open a place and if they didn't do either one, to dump it down at a certain hour—fifteen minutes after three o'clock.

Q. Now, then, when you had trouble Mr. Graham sent for Mr. Lund, didn't he?

A. I don't know about that.

Q. You don't know about that? A. No.

Q. Lund wasn't down there at that part of the creek before that time, was he?

A. I hadn't seen him before that time.

Q. As a matter of fact, you know that he was up here a little below the Ebner dam—he and Captain Martin were up there where there were two parties working against each other on [530] what is known as the Fraction Placer,—you know that?

A. Yes, sir.

Q. And they had sent you up there to preserve order between those two parties?

(Testimony of Dan Reardon.)

A. I think so, yes.

Q. And you don't know who sent for Lund or brought him down here?     A. No, I don't.

Q. When you got into court here, did you ask the Court if a warrant had been issued against you?

A. No, I never asked nothing.

Q. So you don't know, as a matter of fact, whether there was a warrant or not?

A. Yes; there was a John Doe warrant. I found that out on the second day of November.

Q. John Doe—and directed them to serve on the men that had been dumping the dirt?

A. I suppose so.

Q. Because they didn't know your name?

A. They didn't know my name.

Q. What time did you say you went up there to work?     A. I went up on the first day of October.

Q. Had you been up the creek shortly before that?

A. Before the first of October?

Q. Yes.     A. No, never in that basin before.

Q. When you got up there you noticed this house here that Harry was living in?

A. I don't know that I noticed it the first time.

Q. But very shortly afterwards?     A. Yes, sir.

[531]

Q. And you noticed the crew of men along the cliff there?

A. You mean where they were building the sluice flume? What crew of men?

Q. You could see different spots on the cliff where they had been working for a flume line?

(Testimony of Dan Reardon.)

A. You mean what company—this company?

Q. No, the Alaska-Juneau.

A. I didn't notice it the first day, but the second or third day after.

Q. Shortly after? A. Yes.

(By Judge WINN.)

Q. Mr. Shackelford asked you about a placer claim up there. Do you know where this man Harry went to when he left this cabin down near Snowslide Gulch? A. Yes, I think I do.

Q. Where did he go?

Mr. SHACKLEFORD.—What time?

Q. After he left the Snowslide Gulch cabin, where did Harry go? You know approximately about the time that Harry left this cabin down near Snowslide Gulch; I don't mean the exact time.

A. He was there on the 11th of the month, anyhow, of October.

Q. Did you see him up there in the employ of this Alaska-Juneau Company after that? Did you see him doing any thing for Kenzie's people after he left the cabin?

A. Why, there was five or six of us up in the boxes and turned the water out of that creek on this new flume, and he came up and told us not to go any further, after this box was in that we would be trespassing—that was about all I see him do.

Q. You saw Harry? [532] A. Yes, sir.

Q. Do you know anything about his going up to this placer claim Mr. Shackelford was questioning you about? A. That is the place.

(Testimony of Dan Reardon.)

Mr. HELLENTHAL.—That is half a mile away from this property. We object to it.

Judge WINN.—I want to show that Mr. Lund, whom we have just referred to, I want to show that he is the same man that had been brought up by this company, up on the placer—

By the COURT.—You may show that.

Q. Now, this man Lund that Mr. Shackleford questioned you about as being up there on the placer claim, he is the same man Lund that you had this conversation with that you have testified to?

A. The same man; yes.

Q. Do you know what this same company, under Mr. Kenzie's people, were doing up there on the placer that necessitated Mr. Lund, a deputy marshal, to be up there?

Mr. SHACKLEFORD.—We object to the question as incompetent, irrelevant and immaterial.

Objection sustained. Plaintiff allowed an exception.

Judge WINN.—We expect to show that we didn't get him up there.

Q. Do you know who Harry was working for, this man O. M. Harry? Did he ever tell you?

A. Yes; he told me he was working for the Alaska-Juneau, the Treadwell Company.

Q. I will ask you if you know anything about his going up on this placer claim that Mr. Shackleford has just questioned you about and pitching a tent across the right of way of Mr. Mackey's company and living in that tent? [533]

(Testimony of Dan Reardon.)

Mr. SHACKLEFORD.—I object to that is incompetent, irrelevant and immaterial to the issues in this case.

Objection sustained. Plaintiff allowed an exception.

Q. I will ask you if you ever saw Harry's tent up there on this placer claim that Mr. Shackleford questioned you about?

Judge WINN.—I expect to follow this up by showing this state of facts. That this tent was pitched up there across the right of way at the time that this arrest was made, the last arrest, and that they went up there and pitched the tent across a well-cleared piece of right of way, and at a point up to which, about, we had built our flume, and that this same man Harry, who had been down in the cabin below, had gone up there and raised these disturbances, and I will show that we had to change our flume-line and build around his tent to avoid any trouble, and these matters were all done simultaneously, showing the intent of these people to go up there and, if possible, to get possession of every piece of the Ebner property they could, and do it by means of the marshal, and we will follow it up by showing we never asked the marshal to go up there, that these parties asked him to go up there, and even sent telegrams as far back as Washington City to get some new deputies to go up there, through Mr. Rustgard.

Mr. SHACKLEFORD.—We shall object to that as immaterial. The presence of a tent on that grade don't connect the man in any way with it. We shall



(Testimony of Billy Moore.)

object to it as incompetent, irrelevant and immaterial.

Judge WINN.—We will show the man was living there, and our people talked to him, etc., and show photographs showing where we turned our line of flume to get out of the way.

Objection sustained. Plaintiff allowed exception.

Witness excused. [534]

**[Testimony of Billy Moore, for Plaintiff.]**

BILLY MOORE, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. What is your name? A. Billy Moore.

Q. What is your business? A. Carpenter.

Q. How long have you lived in Southeastern Alaska? A. I came here in 1897—in the fall.

Q. Do you know what is called the Ebner property, up Gold Creek, a short distance from Juneau?

A. Yes, sir.

Q. Did you ever work up there? A. Yes, sir.

Q. What year? A. 1910.

Q. Under whom? A. Mr. Mackey.

Q. What kind of work did you do?

A. I was doing general work, part of the time doing carpenter work. When I first started there, there was no carpenter work there, and I was doing laboring work—roustabouting.

Q. What day did you go up there first to work?

A. 25th day of September, 1910.

(Testimony of Billy Moore.)

Q. Where did you work on the 25th day of September, 1910, when you went up there?

A. I worked right there opposite the Ebner boarding-house on the high line flume, the new flume they had constructed, built—on the grade.

Q. What were you doing on the 26th and 27th of September? [535]

A. I was working right at the same place.

Q. The 28th? A. The same place.

Q. How long did you continue to work in that same place? A. Until the first of October.

Q. Where did you work then?

A. Went building a trail over on the sidehill.

Q. Over on the opposite side of the creek from where you had been working? A. Yes.

Q. You have heard the testimony of some of these other witnesses who referred to you as working over there—you are the same Billy Moore?

A. Yes, sir.

Q. Do you know where there is a brushed-out line commencing at an old cabin on the right-hand side of the creek as you go up and is brushed out down to the creek and then on across the creek—do you remember a brushed-out line there?

A. Yes; I know a survey line was brushed out there.

Q. This work you were working upon—the trail you were working upon—was that up the creek from that cleaned-out trail or down the creek from the trail?

A. It was up the creek and lower down the hill.

(Testimony of Billy Moore.)

Q. What days were you working there?

A. I went to work on the first day of October.

Q. Who else was working there with you?

A. There was several men working there.

Q. Will you name some of them?

A. There was Reardon, Black, Seitz and some others I don't know.

Q. Do you know Mr. Kenzie?

A. I know him by sight; yes, sir. [536]

Q. Do you know a man that you afterwards found out to be Burch, that was up here about that time?

A. Yes, I have seen him.

Q. What was the first time that you saw any of these people that were working under Kenzie up about where you were working on the hillside or down the creek from where you were working?

A. I think it was on the third day of October.

Q. Where were you working when Kenzie and his people came up there and undertook to commence their work—where were you working?

A. When I first went to work there, there was some working on the opposite side of the creek, on the right-hand side of the creek as you go up, some of the Treadwell men.

Q. Were you working on this Lotta claim all day on the third? A. Yes.

Q. What time did you commence to work there on the third?

A. I went over there, I guess, about—between nine and ten o'clock.

Q. When you went down there to go to work on

(Testimony of Billy Moore.)

the Lotta was Kenzie and his people there?

A. I didn't see anybody at all there.

Q. About what time did you see Kenzie and his people on the third?

A. It was somewhere, I think, about eleven o'clock—there was some men came up there—ten or eleven. They came up there on the opposite side of the creek from where we were pulling poles down toward the creek.

Q. And where were you working when Kenzie's people came up?

A. I was cutting brush on the trail that leads down to the tunnel.

Q. Were you working above that brushed-out line at the time [537] that Kenzie and his people came up or were you working on this side of it, down the creek?

A. No, I was working above it and lower down the hill.

Q. What did this people—that is, Kenzie's people—undertake to do the first thing when they came up there on the third day of October?

A. The first thing I saw them do, I saw them getting some poles down the sidehill, on the left-hand side going up.

Q. Where were those poles taken from?

A. I suppose they were taken down the wagon road—they hauled them in the wagon road, I guess. They were on the hillside when I saw them.

Q. How near the wagon road?

A. Thirty or forty yards below the road or twenty

(Testimony of Billy Moore.)

yards or something.

Q. That was the first work they undertook to do?

A. That was the first I see.

Q. What took place—did you people do anything to resist them coming down there?

A. I cut trail part of the time and part of the time shoveled and drove rocks—general work along the hill.

Q. What other kind of work, if any, did the people under Kenzie do during that time while you were there, besides taking the poles down, I mean?

A. I don't know what they did do. There was a box there—they were trying to get a little box across the creek, I think, on the third.

Q. Did those people finally blast—did you hear them blast that day?

A. I couldn't say for sure whether they did or not. There were several blasts fired; I don't know who did fire them. I was [538] a little ways from where they were working—I was down the creek, further.

Q. You were not firing any blasts?      A. No.

Q. What kind of work did you continue to do?

A. Packing steel and packing tools down there and powder and pick and shovel a while and cut brush a while—general work.

Q. From what place to what place did this trail lead that you were working on?

A. It was a kind of near cut to the lower tunnel, coming from the Ebner boarding-house. The other trail went way up to the cabin and went down.

(Testimony of Billy Moore.)

Q. When you say the lower tunnel, what tunnel do you mean?

A. I am not very well acquainted with it.

Q. Do you mean that tunnel that Reardon was working in?

A. Reardon and Mike McKenna was working in the tunnel,—I got the steel, brought it down and sharpened it and took it back.

Q. Whom were you sharpening it for?

A. Reardon and McKenna. I took it to the blacksmith-shop down from where they were working.

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. I understand that you first went to work on the Lotta, above where that dam is now? A. Yes.

Q. And at the time that these men were putting the poles in, they were putting the poles in at the same place where the present dam of the Alaska-Juneau Company is?

A. I believe so, yes—just about the same place.

Q. And you started out from the Ebner boarding-house to make [539] a trail down to the lower tunnel on Gold Creek—is that the idea?

A. Yes, that is the way I understood it.

Q. Were you there when the trail was started?

A. No; there was some of it done before I went there.

Q. It was an old trail?

A. It was an old wagon road or something, cleaned up.

Q. Clearing out an old road? A. Yes.



(Testimony of Billy Moore.)

Q. Where were you when the Alaska-Juneau people arrived?

A. I was down the creek just a little ways—probably, I guess, thirty or forty yards.

Q. How many men were there there when the Alaska-Juneau people arrived there?

A. I couldn't tell you exactly the number. There was Adolph Meyer and three or four of us at the lower end and quite a number where they were blasting. I don't know how many.

Q. You were not up to where they were blasting?

A. No, sir; I was a little ways from them.

Q. How far away? A. Twenty or thirty yards.

Q. Did that party have any drills with them—were they drilling into the rock?

A. No, I don't believe they did.

Q. I wish you would be kind enough to tell the Court what it was they were blasting without having drill holes.

A. They had big, long bars; they would jog them down.

Q. In the ground? A. Yes.

Q. They piled up a lot of little boulders and things and then they would blow this out? [540]

A. I don't know. I wasn't there where they were working. I see them with the long bars.

Q. They were working over an old roadway?

A. No, not at this place; they had left the roadway then.

Q. Where did the roadway come from there?

A. It comes down the sidehill.

(Testimony of Billy Moore.)

Q. And branched down towards the creek?

A. Yes, down lower.

Q. They were not doing any rock work?

A. No, not in solid rock; no.

Q. The growth up there is all young growth, is it not? A. Yes, small.

Q. There is no heavy stumps?

A. No, nothing very heavy.

Q. I understand you to say you started to work at what time? A. The 25th day of September, 1910.

Q. And when you went up there the Alaska-Juneau people were up there?

A. Yes, there was a house built there when I went up.

Q. You saw some work along the right of way then, too?

A. Yes; at one place close to the house I see where there had been some work done, close to a cabin, built on the right-hand side of the creek as you go up—a little work was done there near the cabin.

Q. There had been a tunnel started there?

A. Yes, I saw the hole; yes.

Q. You didn't see the end of the hole?

A. No, I never was over there.

Q. And that tunnel was quite a little piece up the creek from the house?

A. Just a little ways; yes. [541]

Q. Who employed you? A. Mr. Mackey.

Q. You were one of the employees of the California & Nevada Copper Company? A. Yes, sir.

(By Judge WINN.)

(Testimony of Billy Moore.)

Q. Do you know who lived in this little cabin that was built down near Snowslide Gulch, under the rocks there?     A. Yes, I heard his name.

Q. Who lived there?

A. A fellow they called Harry.

Q. Is that the cabin you referred to, that Mr. Shackleford questioned you about?     A. Yes, sir.

Q. Do you know how long Harry stayed down there in that little cabin under the rocks?

A. No, I do not.

Q. Do you know where he went to after he left that place?     A. Yes, I do.

Q. Where did he go?

A. He went on the right of way of the high line flume.

Q. What did he do up there?

By the COURT.—Mr. Shackleford admitted he put his tent on your right of way—what you claim as your right of way.

(By Mr. SHACKLEFORD.)

Q. When was it you went over on this Lotta claim work, what day?

A. The first day of October.

Q. Where had you been working before? [542]

A. Over on the high line flume, the new grade.

Q. On the grade of the high line flume?

A. Yes, sir.

Q. How many men were taken off of that job and put over here that day?

A. There was three men over there—two besides myself.

(Testimony of Billy Moore.)

Q. Who were those two men?

A. There was Adolph Meyer and I don't know the other fellow's name.

Q. They moved you over there that day?

A. Yes.

Q. Did you have any instructions when you went over there? A. No.

Q. You were just placed under the charge of Mr. Black? A. Yes; Black acted as foreman.

Q. You don't know why you were moved over that day?

A. No, they didn't tell me any reason whatever.

Witness excused. [543]

**[Testimony of Grover Winn, for Plaintiff  
(Recalled).]**

GROVER WINN, recalled.

(By Judge WINN.)

Q. You are the same G. C. Winn who was on the witness-stand yesterday, and are United States Commissioner for the Juneau Precinct? A. Yes, sir.

Q. And you were such during the months of October and November, 1910? A. Yes, sir.

Q. I will hand you, after identification, a paper termed a complaint, which appears to be signed by G. Crandall Jones and dated on the first day of November, 1910, and appears to be subscribed and sworn to before G. C. Winn. I will ask you if you know that paper. A. Yes, sir.

Q. Do you know who the Jones was that swore to that complaint—what he was doing at that time?

A. I do.

(Testimony of Grover Winn.)

Q. What was he?

A. He was in charge of the work of the Alaska-Juneau flume or so he informed me at that time.

Q. That complaint was sworn out in the regular routine of criminal business that takes place in your court? A. It was.

Q. I will ask you if there was any warrant issued on that complaint by you? A. There was.

Q. I will now hand you what purports to be a warrant, dated November 1, 1910, and has the words G. C. Winn, Commissioner and Ex-officio Justice of the Peace on it, and ask you if that is the warrant? [544]

A. Yes, sir; that is the warrant that was issued on that complaint.

Q. What time was that warrant issued with respect to the time of the filing of the complaint in your office? A. Immediately following.

Q. To whom did you deliver that warrant?

A. Hector McLean.

Q. Who is Hector McLean?

A. He is an office deputy in the U. S. marshal's office, First Division.

Judge WINN.—We first offer in evidence the complaint in this case and wish to have it copied into the record, and then we will follow it up by offering the warrant.

Mr. SHACKLEFORD.—We object to it as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

(Testimony of Grover Winn.)

The complaint is marked Plaintiff's Exhibit "S" and copy is attached hereto and made a part hereof.

Judge WINN.—We now offer in evidence the warrant and wish to have it copied into the record.

Same objection. Overruled. Exception.

The warrant is marked Plaintiff's Exhibit "T," and copy is attached hereto and made a part hereof.

Q. Now, in this warrant—I notice it is first entitled, "In the United States Commissioner's Court for the District of Alaska, Division #1, Juneau Precinct. Warrant. United States of America versus John Doe and Richard Roe." I will ask you if at the time you issued that warrant if those were the only names that were placed in it.

Mr. HELLENTHAL.—We object. It is presumed that this officer [545] did his duty in accordance with the law. And the further objection that the question does not state the facts as they are—the warrant does not read as Judge Winn says it reads. The warrant reads, The United States against Al Graham and some other parties; there is no warrant here reading John Doe or Richard Roe.

By the COURT.—Objection sustained; you may ask the witness what names were in the warrant when it was issued.

Q. I will ask you what names were in the warrant at the time it was issued.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.



(Testimony of Grover Winn.)

A. Graham's and John Doe's and Richard Roe's—those were the three names, and under the John Doe and Richard Roe—whose true names are not known.

Q. You said when the warrant was first issued the names were Al Graham, John Doe and Richard Roe—I will ask you when were the names of Harry Maloney and D. J. Reardon placed in there, if you know?

A. Yes, I know; as soon as they were arrested or before the warrant was returned to me, that is, McLean inserted the names of Harry Maloney and D. J. Reardon in place of John Doe and Richard Roe, whose true names are not known; it was explained at that time who the gentlemen were.

Q. Reardon was afterwards brought before you—what deputy marshal brought him down there before you?     A. Reardon?

Q. Yes—D. J. Reardon, Dan Reardon—who brought him down?     A. Lund.

Q. Lund brought him down?     [546]

A. Yes, I think so—yes, Lund brought him down.

Q. And who brought in Harry Maloney, the other John Doe?     A. Lund made the three arrests?

Q. Al Graham?     A. Yes, sir.

Q. Did he bring all three of them in at the same time?

A. I don't think so. As I remember, there were two of them at one time, and as I recollect now, they brought in Graham the next morning, couldn't get service on Graham the night before—something like that—and they retained that warrant. The warrant

(Testimony of Grover Winn.)

wasn't returned to me until the next day or the day following that. They retained that warrant in order to arrest Graham.

Q. You don't know when, if ever, this warrant was delivered to Lund, do you?

A. No; all I know is when it was delivered from my office to the marshal's office.

Q. I hand you another complaint signed by George C. Jones, dated on the second day of November, 1910, and sworn to before G. C. Winn, Commissioner and Ex-officio Justice of the Peace, which is entitled, United States of America versus F. J. Wettrick, and ask you if that complaint was sworn out in your court before you? A. It was.

Q. The man Jones named in there is the same man Jones who swore to the complaint in which the warrant was issued against Graham, John Doe and Richard Roe? A. Yes, sir.

Q. Is the warrant attached to that?

A. Yes, sir; the warrant is attached to that.

Q. There is a warrant attached to that which is signed by you [547] and dated November 2, 1910—is that the warrant you issued on that against Wettrick? A. It is.

Q. When was Wettrick brought to you, do you remember?

A. The second day of November—the same day the warrant was issued.

Judge WINN.—We now offer in evidence the complaint and warrant in this case and ask that it be

(Testimony of Grover Winn.)

copied into the record and the files returned to the commissioner.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

By the COURT.—It is so ordered.

(Copies of the complaint and warrant are attached hereto and made a part hereof.)

Q. Now, I hand you a book here which you had yesterday called Criminal Journal, Juneau, Commissioner's Court, and I will ask you if that is part of the records of your office. A. It is.

Q. Just in a general way, what does page 234 of this book show?

A. My record of the case of the United States versus Graham, Reardon and Maloney.

Q. And shows the final disposition of this case?

A. Yes, sir.

Judge WINN.—We offer in evidence the type-written part of page three (234), which shows a demurrer was filed, demurrer sustained and the defendants discharged.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

(Page 234 to be copied and attached hereto as a part hereof.)

Q. I will ask you if at that time and at the time of the argument of the demurrer to the complaint in

(Testimony of Grover Winn.)

this case, if any [548] other attorney appeared there besides Judge Folsom, the assistant district attorney, in aid of the prosecution of these cases.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. I wouldn't say appeared there directly as a private prosecutor in the cases. Mr. Bayless appeared, I believe, at the time—I know that Wettrick's complaint was sworn to. He was not present, however, at the time that Jones swore to the first complaint against Graham et al., but he was present at the preliminary or at the time we set the cases in Graham and others, and about twenty minutes after that is when they swore out the complaint against Wettrick. He was present at that time. I don't remember whether Bayless or any other counsel were present at the time of the argument of the demurrer.

Q. Just let me refresh your mind on that. I appeared there in defense of the parties arrested?

A. Yes, sir.

Q. And don't you know that when Judge Folsom was arguing the demurrer he and I had about completed the argument of it, when Mr. Bayless got up and asked to be heard and Judge Folsom and I raised the objection that he was one of the attorneys for the Treadwell Company? A. Oh, yes.

Q. And had no order of the Court to aid as a special or private prosecutor and you overruled my objection?

(Testimony of Grover Winn.)

A. I remember it now. Si Hellenthal was also there.

Q. And then do you remember the instant that took place, you took a recess? [549]

A. Yes, and they retired—or Mr. Bayless asked to. Objected to. Sustained.

Q. However, you overruled my objection but Mr. Bayless didn't get up to make his speech afterwards?

A. No.

Objected to. Sustained.

Q. Now, on the next page of this criminal record of your office or journal, you have the final disposition of the case against Wettrick? A. I have.

Q. How did that fall by the wayside?

Objected to as not the best evidence.

Judge WINN.—We now offer in evidence page 235 of this record, showing the disposition of the case of United States versus F. J. Wettrick, and ask that the stenographer be permitted to copy it into the record.

By the COURT.—It is so ordered.

(Copy of page 235 is attached hereto and made a part hereof.)

Q. Now, then, after the discharge of Mr. Wettrick and Al Graham and Maloney and Reardon, have they ever been since that time prosecuted in your court, for the offense that they were up before you for, at that time?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained. Plaintiff allowed an exception.

(Testimony of Grover Winn.)

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. None of these men were ever kept in custody?

A. No.

Q. As soon as they appeared, bail was set and they gave bail.

A. Yes, within an hour or an hour and a half they were allowed [550] to go on their own recognizance—for an hour or an hour and a half.

Q. And in these particular cases the men were on their own recognizance?

A. No; that was only for the course of an hour or so.

Q. Until they got bail?

A. Yes, so Wettrick could arrange bail.

Q. And as soon as they got bail they were let loose?

A. Yes, they were released naturally on getting bail.

Q. And then the men who were named Roe and Doe were described to you as persons who had committed the alleged trespass and whose names they had not been able to obtain?      A. Yes, sir.

(By Judge WINN.)

Q. Who described them to you?

A. G. C. Jones.

Q. This same officer of the company?

A. Yes, sir.

Q. What you mean to say when you say that these parties were not in custody, you mean they were not put in jail?

A. Yes, that is what I mean—they were in the



(Testimony of Grover Winn.)

custody of the court; that is all.

Q. If they had not gotten that bond, though, you would have had to put them in jail?      A. Yes, sir.

(By Mr. SHACKLEFORD.)

Q. G. C. Jones is the man in charge of that work, on that flume?      A. He so informed me.

Q. The reason I asked you that question, Judge Winn has referred [551] to him as an officer, and I apprehend that some time that word might be referred to in the future as referring to him, as a civil or governmental officer.

Judge WINN.—Did he tell you he was assistant superintendent up there of the Alaska-Juneau Gold Mining Company?      A. Yes; I believe he did.

Judge WINN.—That is all.

Witness excused.

Judge WINN.—I will recall Mr. Wettrick. [552]

[Testimony of F. J. Wettrick, for Plaintiff  
(Recalled).]

F. J. WETTRICK, recalled as a witness in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. You are the same Wettrick who has testified in this case before, are you not?      A. Yes, sir.

Q. Did you have anything to do with the surveying out or laying out of any flume or tunnels upon the Ebner property in 1910?      A. Yes, sir.

Q. Did you hear Lloyd Hill's testimony on the witness-stand?      A. I think I heard some of it; yes.

Q. What right of way for a flume-line did you and

(Testimony of F. J. Wettrick.)

Lloyd Hill in 1910 survey out on this Ebner property?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. We had charge of the location of the flume grade for the new high line flume that the company contemplated building, and has since built, beginning at the point of intake, being by the old Ebner dam, the large dam above the mill, and running down toward Shady Bend. This work of surveying, locating, taking the levels, etc., was done from time to time.

Q. Did you do anything towards surveying out a tunnel-site that season, too?

Same objection. Objection overruled. Defendant excepts.

A. The location of a tunnel.

Q. Yes. A. Yes.

Q. Do you know what time you commenced that work, the tunnel work?

A. You refer to the cross-cut tunnel near the mill-site? [553]

Q. I mean the survey you did on what is known as the Ebner mine tunnel? A. The large tunnel?

Q. Yes.

A. That was done—the tunnel was definitely located by means of data that had been obtained during the course of the summer on about the latter part

(Testimony of F. J. Wettrick.)

of November, I believe—I am not so sure about that date.

Mr. HELLENTHAL.—How is that?

A. The latter part of November or the first of December—I am not so sure about that date.

Q. That is the time it was permanently located?

A. Yes; observations were taken from time to time before that, but the location of the site was made at that time and the course of the tunnel given about the first part of December, I believe it was.

Q. What time did you commence surveying, if you remember, on this right of way for the flume?

A. About the first of August, I think.

Q. Now, Mr. Wettrick, were you on and off of this property frequently or otherwise during the summer of 1910?

A. I was on that property very frequently.

Q. Were you at all times engaged in surveying or did you have control of any other work up there during that summer?

A. I had control, was in charge of the construction work on the flume part of the time and the general management in Mr. Mackey's absence of the entire work.

Q. Do you know anything about the incidents that took place up there on the third of October?

A. No, I do not—by reason of having been on the ground at that time I do not. [554]

Q. You were not present up there?

A. I was not.

Q. Now, some time along about the latter part of

(Testimony of F. J. Wettrick.)

October or some time in November was Mr. Mackey here?

A. About that time he was not there, at the time I had charge of the work.

Q. He went away and went to Ketchikan, didn't he? A. Yes, sir.

Q. And what, if anything, were you to do or what part of the business did you have charge of in Mr. Mackey's absence?

A. Seeing that the construction of the flume was prosecuted with diligence and that the general work as it had been planned by the people in charge was carried out.

Q. You later on that summer surveyed the Parish road claim #2 for patent? A. I did.

Mr. HELLENTHAL.—We object to the evidence of the surveys for patent. I want the record to show whether this survey was ever followed by any application. We object to it as incompetent, irrelevant and immaterial and not the best evidence.

By the COURT.—The objection will be overruled. You can bring out in cross-examination any further details of what the work consisted of.

Defendant allowed an exception to the ruling.

Q. Now, at that time when you made the survey did you find any tunnel work upon the Parish #2?

A. I did.

Q. When did you survey it for patent? I didn't get the date.

A. The date of the survey was during the first part of the [555] month of November. The or-

(Testimony of F. J. Wettrick.)

der for survey was issued from the surveyor general's office on the 20th day of September, I believe, and having other duties at that time I did not immediately go upon the ground to survey it for patent, but did as soon as I could.

Q. Prior to this time that you made the survey for patent, as you state, did you know anything about this work that was going on on the Parish #2 claim?

A. Yes, sir.

Q. When did you first take cognizance of or have any personal knowledge of any work that was being done on the Parish #2 claim during the year 1910?

A. I had seen what has been referred to here as the lower tunnel on the Parish #2 from time to time, and did see it from time to time before the—well, during the month of August,—that was the time I went upon the ground again to observe matters in more detail.

Q. Now, in making this survey of the claim for patent, did you make any measurements as to the depth into the mountainside that this tunnel that you speak of had been driven? A. Yes, sir.

Q. I wish you would give that to the Court.

A. There are two tunnels upon the Parish claim, each with a length of 32 feet.

Q. Parish #2?

A. On the Parish #2, yes, and also an open cut that is 19 feet long.

Q. Do you know what portion of this work was done during the year 1910?

A. Yes, the upper tunnel was completely driven

(Testimony of F. J. Wettrick.)

in 1910 and the [556] lower tunnel was continued to a greater depth also.

Q. Now, Mr. Wettrick, in making your survey I will ask you, what part of the work did you measure up and take into consideration when you were making your survey for patent?

A. I took all the work that was plainly visible upon the claim. I saw that I had more than was necessary to make the return of the survey and just took that which was plainly visible upon the claim, including the two tunnels and the open cut. I think that is all I mentioned in the returns, except that I mentioned also the road that was built on the Parish claim on the left-hand side of the creek as part of the development work.

Q. Do you remember your estimation of the cost of just the two tunnels and the open cut alone?

A. Yes, I do.

Q. What was it?

A. The total value for the tunnels is \$960. The open cut was valued at \$100, making \$1,060 for the tunnels and the open cut.

Q. You didn't go over this work as to where the old tunnel used to be up there on one of these claims and go into the Borean pit or any of those matters at all in the construction of your return there?

A. No, sir; I didn't estimate that at all, its size or anything else, except those items I have mentioned.

Q. And any clearing off of the surface of the ground, you didn't take that into consideration?

A. No, sir.



(Testimony of F. J. Wettrick.)

Objected to as leading. Sustained.

Q. This open cut, you say, is about how long?  
[557]

A. Nineteen feet, I think my returns show.

Q. Was that put there in 1910?

By the COURT.—You are asked about what you recollect. Counsel made an objection in the beginning that your statement was not the best evidence. Nothing has appeared to indicate that you ever made a return. If you do not remember from your recollection, the return had better be produced, not giving your opinion as to what the returns show.

The WITNESS.—I remember that distinctly—that that open cut was 19 feet long.

Q. You say while Mr. Mackey was absent from this work in 1910 that you had somewhat charge of the work. I will ask you if any work was being carried on in either one of these tunnels on the Parish #2 in the absence of Mr. Mackey. A. Yes, sir.

Q. Which one of the tunnels?

A. The upper tunnel.

Q. You are the same Wettrick that Reardon referred to in his testimony a few minutes ago on the witness-stand? A. I apprehend I am; yes.

Q. Do you know about the date that Mackey left here?

A. I don't know the exact date; no.

Q. When he left, whatever time that was, was there anybody at work upon the Parish #2 in either one of these tunnels?

(Testimony of F. J. Wettrick.)

A. Yes; there was work being carried on in the upper tunnel.

Q. Now, Mr. Wettrick, there has been some testimony and evidence here about a cabin that this man Harry was living in for a while. I will ask you if you have indicated on this plat and map called plaintiff's Exhibit "N"—I wish you would explain how you have indicated it.

A. The cabin is indicated as standing on the right-hand side of [558] Gold Creek going upstream and is here designated as the Alaska-Juneau Company's house as shown by us on this plat and upon the ground, within the boundaries of the Cape Horn lode claim.

Q. I will ask you to state to the Court from the examination of this plat and the scale upon which it is made and from what measurements you have made up there, if you would be able to tell me about what portion of the newly completed flume of the defendant company is below the lower side line of the Parish #2 lode claim?

Mr. SHACKLEFORD.—Does that refer to the present condition of the flume or the flume at the time of the controversy?

Judge WINN.—The flume as completed.

A. Approximately 400 feet, taking the curve and sinuosities in the length.

Q. That portion of the flume is on what mining claims?

A. The portion of the flume outside the boundary lines of the Parish #2 is on the Taku Queen.

(Testimony of F. J. Wettrick.)

Q. This cabin that is referred to in this map that you have just testified concerning, approximately how far off the Parish #2 claim is that?

A. Approximately 200 feet. I could tell you more definitely if I had a scale.

Q. The map is made to a scale?

A. Yes, sir. It is approximately 200 feet.

Q. Now, Mr. Wettrick, when you took charge of this work up there for Mr. Mackey, in the latter part of October and in December, 1910, I will ask you up to that date what progress had this defendant company made with the construction of its flume-line, as it was afterwards completed by them?

Mr. HELLENTHAL.—What date? [559]

Judge WINN.—The latter part of October or the first of November. Objected to as immaterial. Objection overruled and defendant allowed an exception.

A. The flume had been commenced down around that point where the present penstock is located and had been carried on, after having constructed the grade, by laying the bottom of it along the flume, up toward the Lotta claim and some men, working upon the point where the present intake is, had also constructed a little cut there and started, I believe, the bottom, had laid some timbers from the upper end of the flume where the present intake is of the dam.

Q. Have you described, now, all that the defendant company had done in the way of constructing this dam and building a flume in and about its dam,

(Testimony of F. J. Wettrick.)

when you had charge there for Mr. Mackey?

A. I didn't mention the dam—what they had done with the dam.

Q. I want you to tell all the work they had done on the upper end of their works. You told the work they had done down at the lower end, commencing at the penstock and across the Taku Queen and up towards the Parish. Now, when you took charge what, if anything, had they done from what is indicated on this map on the Alaska-Juneau Company's dam and intake down across their flume they built below?

A. The dam was practically completed. The water was running through the flume and the gate was in process of construction when I first took charge and a portion of the bottom was laid, the bottom of the flume and siding was being put on. I believe, as well as I remember it, there was a crew working by the dam, at the dam, upon the flume and one at the lower end, bringing the flume up from the lower end. [560]

Q. That is when you took charge—did they keep up that work then while you were there in charge of the property in Mackey's place? A. Yes, sir.

Q. Did they build from both ends?

A. Yes, the flume was being completed from the lower end, or partially completed—the cover was not laid—and also the intake was being laid as well and the siding put on and the flooring as I have told you from the intake.

Q. Now, Mr. Wettrick, I will ask you if you know

(Testimony of F. J. Wettrick.)

Dan Reardon and a man named Maloney and a man named Graham?     A. I do.

Q. Were they doing any work in or about or upon the Parish #2 lode claim during the time you had charge of this business for Mr. Mackey?

A. The two men Reardon and Maloney were. Graham was the general foreman who went down as he was instructed to that place of operation and took charge, also to look out for the work at the upper part of the property.

Q. Do you know a man named G. C. Jones who swore to those warrants that have been identified by Grover Winn?     A. Yes, I know the gentleman.

Q. What was he doing at that time?

A. He was superintending the construction of the flume and grade line down around the Taku Queen in Snowslide Gulch.

Q. That is, he was doing work for the defendant company?

A. Yes, he had charge of the operations there.

Q. Do you know a man named Kennedy, who was assistant superintendent of the Treadwell and also assistant superintendent of the Alaska-Juneau—I believe he used to be? [561]

A. I know the gentleman; yes, sir.

Q. When you were up there in charge of this work did you see either one of these gentlemen?

A. I saw both Kennedy and Jones; yes.

Q. You know where these two tunnels are, of course, on the Parish #2 lode claim. I will ask you in driving this upper tunnel where was the debris

(Testimony of F. J. Wettrick.)

or muck dumped when you first took charge of the work for Mr. Mackey up there?

Objected to as immaterial.

Objection overruled. Defendant allowed an exception.

A. It was dumped at the mouth of the tunnel, the only place it could be dumped, on the steep sidehill, so as to roll down the creek.

Q. Did they continue dumping that muck there while you had control or did they dump it somewhere else? A. They continued dumping the muck.

Q. Now, I will ask you if the defendant company under this man Jones or Kennedy were doing any work down on the defendant company's flume-line as afterwards completed while you were having this muck dumped or while the people working in this tunnel were dumping the muck down the hill.

A. They were bringing the flume from the lower end up toward the place where the muck was being dumped and also bringing the flume from the upper end towards it.

Q. You are the same F. J. Wettrick that is referred to in this complaint I have offered in evidence, sworn to by Mr. Jones, and also the same Wettrick that was afterwards arrested on a warrant, and brought before Grover Winn and discharged?

A. Yes, sir.

Q. Now, Mr. Wettrick, I wish you would tell the Court what, if [562] anything, in the way of conversations took place between you and Mr. Kennedy or Mr. Jones or anyone that had charge of the



(Testimony of F. J. Wettrick.)

work of the defendant company just about the time or a little prior to these arrests.

A. On the second day of November, I believe, it was told that our men who were working in that tunnel, Reardon and Maloney, were told to not dump any more muck and desist from prosecuting their work and that sort of thing, and I went down to the place where the tunnel was and noticed that the tunnel was full of muck, which they had allowed to accumulate, following the instructions from the defendant company and found that either the work would have to quit in the tunnel or the tunnel would have to be mucked out, and I went down on their grade and found one by the name of Schultz, who told me he was the boss carpenter in charge of the work at that place, took him over to the place where on our muck had previously been rolling down over the hill and related to him the situation, that we either had to quit or—

By the COURT.—I don't think you should undertake to try over all these cases again or get at the merits of these criminal prosecutions.

Q. Just the conversation you had with whoever was in charge there.

A. Yes—Schultz. I told him we had to muck out up there or quit work. He said, "Well, what are you going to do?" And I told him, "I propose that you put a few boards over your bottom here that you have constructed here, that you call a flume, and let us muck out, which we will keep on doing until we have mucked out, and then you can take them

(Testimony of F. J. Wettrick.)

away and [563] you can go on with your work, and we will do that from time to time as we need to muck out," and he said, "Well, I don't know." If I remember rightly, I think that is what he said.

Q. Did you have any conversation with Kennedy?

A. No, I did not. I didn't see him that day, I don't think, except from a distance, or the day before—I don't know. I forget when it was I saw him.

Q. Did you have any conversation with him at all about dumping the muck down there over his flume-line that he was building?

A. Not with Kennedy; no.

Q. Did you have any other talk with this man in charge of the labor, Schultz?

A. Yes. He walked down the flume with me some distance and I had a talk with him and told him it was not our intention—these were the words I used—"It is not our intention to hinder you in your work or destroy your flume; all we want to do is to prosecute our work with diligence." That is all we ever wanted to do.

Q. Did they put any boards over the flume so you could muck out? A. No.

Q. What did you do concerning keeping in progress this work of the Ebner Company that you were put in charge of, in the way of running this tunnel on this claim?

A. This was eleven o'clock, and I told him that the men would absolutely have to muck out this evening, and we would give him until three or three

(Testimony of F. J. Wettrick.)

fifteen to make some provision by which the muck could continue to come down there as it was before—either put boards over or do anything they wanted [564] to. I told him at 3 or 3:15 our men had instructions to muck out, which instructions were left with Reardon and Maloney and I came downtown.

Q. And you came downtown? A. Yes, sir.

Q. What happened then?

A. Up by the tunnel, you mean?

Q. Yes.

A. The mucking continued as I instructed it was to be done—commenced, as I had instructed, at 3:15 as they told me afterwards—about a quarter past.

Q. I want to direct your attention to what took place, if anything, in regard to any arrests that were made afterwards—was it that day or the next day you and these people were arrested—that you had the talk with Schultz? A. It was the next day.

Q. Did you have any other conversation with anyone in charge of the defendant company's work up there before you were arrested about dumping?

Same objection.

By the COURT.—You can direct his attention to some particular men.

Judge WINN.—I don't know whether he did or not.

The WITNESS.—Only in so far as the conversation with Jones in the commissioner's court here is concerned.

Q. With Jones, in the commissioner's court?

A. Yes, following the arrest of Reardon and Ma-

(Testimony of F. J. Wettrick.)

loney. I appeared for them in the early morning and entered the plea of not guilty, and I believe that Jones was there at that time. The conversation did not relate with any particularity [565] to the boards or flume, but I simply reiterated what I told to Schultz.

Q. You appeared in court for yourself and the other defendants. Who appeared there, if anyone, to prosecute the cases that morning?

Objected to as incompetent, irrelevant and immaterial. Objection sustained. Plaintiff allowed an exception.

Q. I will ask you if anyone from the United States district attorney's office, Mr. Rustgard or Judge Folsom or any one of his deputies, appeared there or did someone appear as a private prosecutor?

Objected to as incompetent, irrelevant and immaterial and not the best evidence.

By the COURT.—I don't think this has been shown in this case. He may answer.

Defendant allowed an exception to the ruling.

A. Mr. Bayless and Mr. Hellenthal, Si Hellenthal, were there.

By the COURT.—Did you answer that Mr. Rustgard or Mr. Folsom were not there?

A. I answer that they were not there, from my recollection.

Recess to 2 P. M.

(Testimony of F. J. Wettrick.)

Afternoon Session.

Continuation of the direct examination of Mr. WETTRICK.

(By Judge WINN.)

Q. At the time that you were in charge this property up there in the absence of Mr. Mackey, did you ever appeal to the United States marshal to go up there and make any arrests of anybody?

Objected to as incompetent, irrelevant and immaterial and not the best evidence.

Objection sustained. Plaintiff allowed an exception. [566]

Q. Did you or anybody under you ever come around here to swear out any complaints to have any of these opposing parties arrested?

Same objection. Objection sustained. Plaintiff allowed an exception.

Q. Did you see this deputy Lund, this Deputy Marshal Lund up there? A. Yes, sir.

Q. What day did you see him up there?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. I saw him there frequently during the month of October.

Q. During the month of October? A. Yes, sir.

Q. Who was he with when he was up there generally?

Same objection. Objection overruled. Defendant excepts.

(Testimony of F. J. Wettrick.)

A. I saw him occasionally in the cabin by the road up there at the Ebner mine.

Q. Did he give you any orders?

A. No, he did not.

Q. You heard Reardon's testimony this morning—you don't know anything about those conversations he had with Reardon?

A. No, I do not, personally.

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. Where was your watchman's cabin—did you have a watchman's cabin up there?

A. We had buildings around the mine.

Q. Lund stayed with your people part of the time?

A. He stayed in our cabin occasionally when I saw him.

Q. When the weather was bad? [567]

Q. He was up with Captain Martin—both of them were from the marshal's office as you understood it?

A. Both of them were up there—I never saw both of them there at the same time.

Q. Most of the time they were up on what is known as the Fraction Placer, near the end line of the Golden Fleece?

A. I never saw them there.

Q. I understand you to say that the first indication of entry on the part of the Alaska-Juneau people on the ground in controversy, the Parish and Lotta lode, was about the time of this first arrest?

A. I don't think I said that.

Q. Do you mean to convey that to the Court?



(Testimony of F. J. Wettrick.)

A. No; I don't know when that was exactly.

Q. You say you started your survey work on the high line flume of the California & Nevada Copper Co. people about the first of August?

A. About the first of August, yes.

Q. 1910? A. Yes, sir, around there.

Q. It was after Mackey and Mr. Bent had taken charge and superseded Mr. Tripp, wasn't it?

A. Yes, as far as I know.

Q. You are not exact about that date? A. No.

Q. If Mr. Tripp should say that he left the employ and turned the property over on the third of August, it was probably about that time or shortly afterwards? A. Somewhere about the first; yes.

Q. You were employed by Mr. Bent, were you?

A. Yes. [568]

Q. After his arrival here? A. Yes.

Q. Now, when you were employed there, you took charge of a proposed survey for a patent of the Parish #1 and Parish #2 lode claims?

A. During the course of the year's work, the two or three months' work; yes.

Q. About what time was it your attention was first directed to that particular work?

Judge WINN.—Did you understand the Parish #1? A. No, Number 2.

Mr. SHACKLEFORD.—The Parish Number 1 and 2—on the question of surveying and doing the work for a patent on the Number 2, didn't you survey the two claims together? A. No.

Q. Didn't you ever survey the Parish #1?

(Testimony of F. J. Wettrick.)

A. I surveyed the extension lines; yes.

Q. Did you do any work on the Parish #1 or have any work done under your supervision?

A. No, sir.

Q. You did survey last fall the Parish #1 there?

A. Part of it.

Q. Part of it as already patented?

A. No, I surveyed part of it. I surveyed as much of it as was necessary to extend the side lines of the Parish #1 some distance up the hill.

Q. You have not surveyed the Parish #1 for patent—the remaining unpatented portion of Number 1 Parish? A. No.

Q. And you haven't done any other work on the Parish #1 under [569] your supervision?

A. No, not under my supervision.

Q. Your idea in starting what is known as the upper tunnel which is above the Alaska-Juneau flume-line was to complete the assessment work by developing the ore body on that claim from there; is that right?

A. It was to do development work on the claim; yes.

Q. And as a deputy mineral surveyor you have to certify that the work is development work, directed in good faith toward the development of an ore body, don't you?

A. That is about the oath that you make. Of course, it does not necessarily have to be applied to the uncovering or driving of a tunnel, it might be other work that might be necessary in order to facili-

(Testimony of F. J. Wettrick.)

tate the general work.

Q. As long as you are driving a tunnel it is supposed to be directed toward the development of an ore body on the claim?

A. That is the intention; yes.

Q. And when you survey a claim for patent, you certify to it—that it is a mineral claim and that the work on it is done to develop the claim as a mineral claim?

A. I certify that so much development work is done—the definition of that is left to—

Q. It is a matter of law?      A. Yes, sir.

Q. Now, underneath the line of the Alaska-Juneau flume there was already a tunnel?      A. Yes, sir.

Q. Far enough down so that the flume did not interfere with getting into that lower tunnel?

A. It was below the tunnel. [570]

Q. What ore body or indication led you to start the development work on the upper tunnel in the place that you did?

A. There was a very plain quartz stringer there.

Q. White quartz?      A. White quartz.

Q. As to its value you don't know?      A. No.

Q. You don't know whether it bore gold or the other precious metals named in the mining statutes of the United States or not?

A. Well, it had the ore that is commonly found in that section bearing gold; yes.

Q. Do you know whether it bears gold or not?

A. I never had it assayed. I did it by comparison with other rock.

(Testimony of F. J. Wettrick.)

Q. Did you see any gold in it?

A. No, I didn't see any free gold.

Q. Did you pan it? A. No, sir.

Q. Do you want to make a statement to the Court now that that development work was done on a stringer carrying precious metals?

A. I say it was done on a stringer that compared favorably with other rock found in that country that does bear gold.

Q. How does it compare—simply that it was white quartz, that is all, wasn't it?

A. It had the same characteristics as lots of other quartz has up in that country.

Q. You don't want to make the statement, however, that it was an ore-bearing quartz?

A. No, I don't, because I didn't have it assayed to show it myself. [571]

Q. You selected a place which is marked here so as to show that it is on a steep hillside. Come here a minute. The place marked "tunnel" in the vicinity of the word "flume" on the right-hand side of the creek looking up, is what is known as the upper tunnel? A. Yes, sir.

Q. And this contour or alleged markings there are made to indicate it is on the edge of a bluff, isn't it—feather marks? A. No, that is part of the dam.

Q. It was immediately over the proposed right of way of the Alaska-Juneau flume?

A. It was above the Alaska-Juneau flume, about forty feet.

Q. And almost immediately over it—that is, it is

(Testimony of F. J. Wettrick.)

very steep at that place?      A. Yes, sir.

Q. So the dump would naturally fall on it?

A. Naturally.

Q. What were your instructions, other than the ones you have recited, with reference to any strategic work that you were to do up there in connection with this contest for a water right?

A. I don't recall any specific instructions that sounded like stratagem or anything like that.

Q. Had you any instructions other than to survey the claim for patent and do this work?

A. That is about it.

Q. You want the Court to understand that you were up there in ignorance and without any intention of interfering in any way with the development of the proposed water right of the Alaska-Juneau Company?

A. I had no instructions to do anything to interfere with your work nor was that my intention when I had charge of it. [572]

Q. Now, you never had any conversation with any of the men connected with the Alaska-Juneau Company about what you should do under such circumstances, did you?

A. I was not in the habit of taking instructions from the Alaska-Juneau men.

Q. I didn't mean the Alaska-Juneau men. The California & Nevada, I mean.

A. The instructions that I got were to continue the work when Mr. Mackey left, as outlined, as diligently as I could.

(Testimony of F. J. Wettrick.)

Q. What conversation did you have with them with reference to this contest that was going on with reference to this right of way up there?

A. I don't remember that.

Q. You say you didn't have any with specific reference to the contest?

A. With specific reference to the contest? None, that I remember—we had other work to do rather than to discuss stratagem.

Q. Now, you knew about where that flume-line was going to go when you located that tunnel, didn't you?

A. When I located that upper tunnel?

Q. Yes.

A. I don't believe I located that upper tunnel. When I had charge of that open cut work or the tunnel was already started.

Q. Already started? A. Yes.

Q. Then, you were not the man that established the place there for the purpose of further developing the claim? A. Not at that particular place; no.

Q. And it was not your judgment that chose the stringer you [573] are mentioning as the point for development? A. I didn't direct that.

Q. Who did do that, do you know?

A. I don't know. As I said, I took charge—I continued the work as handed over to me.

Q. But any work that was done in those tunnels was done on the recommendation of yourself and Lloyd Hill to Mr. Mackey, to have more work, in order to have sufficient evidence to secure a patent under the mining laws of the United States, wasn't



(Testimony of F. J. Wettrick.)

it? A. Not exactly that way.

Q. Then, Mr. Mackey is mistaken if he said that it was done under your recommendation?

A. If you want me to explain, I will, as to how that was done.

Q. I will ask you if the firm of Wettrick & Hill told him to have the work done?

A. We told him to do more work on the claim; yes.

Q. Now, who located that as a working place, that is what I wanted to know? Do you know?

A. No, I do not.

Q. Can you give me any light on the subject at all?

A. I can't do it definitely; no.

Q. When was it you had this conversation with Mr. Mackey about having more work done on that claim—before he went south, wasn't it?

A. Yes, some time before that. I don't remember exactly.

Q. Either August or the early part of September?

A. It must have been somewhere around the latter part of September, or first part of October. I don't remember exactly—that plan was discussed from time to time, the general plan.

Q. The work on those two tunnels, the lower and upper tunnel, [574] on the Parish #2 was started after the hearing for the temporary injunction down here, wasn't it?

A. I am not certain about that.

Q. Well, it was started after you knew that the Alaska-Juneau people had proposed to take a flume-line down that sidehill?

(Testimony of F. J. Wettrick.)

A. No, I don't know exactly when it was started.

Q. You don't know when it was started?

A. No.

Q. Well, if it was started subsequent to the filing of that first suit and the hearing on that injunction. it was started after you knew that the Alaska-Juneau people were going to take the water out somewhere in the vicinity of the Lotta or Parish claims along the sidehill in a flume to Snowslide Gulch?

Objected to as argumentative. Sustained.

Q. Now, as a matter of fact when did you first learn of the intention of the Alaska-Juneau people, while you were connected with this property—you were working on the property in different places all that summer and fall, were you not, after Mr. Mackey left? A. At intervals, yes.

Q. Now, when did you first learn that the Alaska-Juneau people proposed to take the water out of Gold Creek at a point somewhere on the Parish or Lotta lodes and take it down along the bluff side to Snowslide Gulch by flume?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. By actual observation, do you mean?

Q. Yes.

A. I don't remember exactly. I know that I went down to the [575] creek during August some time and saw a location notice posted there in a trough. I don't remember exactly when that was. I think the testimony of mine given in that injunction hearing as to when that date was—

(Testimony of F. J. Wettrick.)

Q. Well, before the 31st of August you not only knew that they had posted a location notice, but you knew they had constructed trails across the Parish lode on to the Lotta lode, over the Taku Queen and constructed a cabin on the Cape Horn claim?

A. Yes, they were going all over the claims there.

Q. And that was before the 31st of August?

A. I believe so, yes. There wasn't anything definite there that I remember in the early part of August as to where they were going to put their flume, nor where they expected to put their dam; that was a mere supposition on my part, I think.

Q. I will ask you to refresh your recollection. I will ask you if it is not a fact that prior to the 31st of August you found existing upon the ground—that you found by actual measurement prior to the 31st of August, 1910, that the notice of water location posted by L. D. Mulligan is within the boundaries of the Lotta lode claim owned by the plaintiff, etc., and other matters stated in your affidavit.

A. I just answered that question the same way.

Q. The same way you did when you made your affidavit?

A. Yes, your previous question. I told you they were all over that claim and the notice was posted up there some time during August.

Q. You also know that a tunnel was started prior to that time on the Parish #2 lode by the Alaska-Juneau people? A. During the month of August?

[576]

Q. Yes. A. Yes, I saw it from the road.

(Testimony of F. J. Wettrick.)

Q. How far above the present grade of the Alaska-Juneau flume is that tunnel?

A. It is a matter of 18 or 20 feet, I think. I don't remember exactly—I don't think I got the difference in the elevation.

Q. Approximately that?

A. I would judge so. As I remember the location of the two tunnels, I rather think it is less than that.

Q. When did you finish your survey for the high line flume? A. The preliminary survey?

Q. Yes.

A. I don't remember. Very likely it is in my note-book.

Q. I wish you would look that up and let me know. Do you know when you finished your regular survey for that flume by making the flume-line on the ground?

A. The preliminary survey—that is what I had reference to. I was frequently on the grade and re-establishing the grade stakes and re-ran it once or twice.

Q. And after the preliminary survey was made there was some changes made in the position on the ground as there is in railroad and other surveys—after the preliminary survey was made?

A. Just the little change due to the slight difference in the grade that was finally chosen.

Q. In the elevation of the grade?

A. Yes; that was finally chosen.

Q. About this Ebner mine tunnel which you spoke of here, when you went to establish that point, what

(Testimony of F. J. Wettrick.)

did you find there with reference to a tunnel having already been started? [577]

A. There is a tunnel faced up down there near that point—lower than that.

Q. Lower than this point? A. Lower.

Q. That is Mr. Tripp's tunnel, as you understand it?

A. Yes, I know Mr. Tripp had that work done.

Q. So the proposition of changing the place of the tunnel—this new tunnel was substituted for that as the entrance to the working tunnel of the Ebner mine?

A. Yes, sir.

Q. I understand you that each of these tunnels, the lower and upper tunnel on the Parish #2, as to this work in 1910, measured 32 feet each?

A. That is the measurement I have; yes.

Q. Is that the measurement after the entrance into the hillside or from the first place where the ground is broken in the open cut that approaches the tunnel?

A. No; I believe that is the measurement from the point which is the mean between the point where the ground is first broken and the point where you go into the tunnel.

Q. How much actual overhead is there in that upper tunnel—how much actual overhead?

A. I wouldn't know about that. I imagine about 28 feet or so, probably less or probably more.

Q. What is the difference in elevation between the Alaska-Juneau flume as at present located and the mouth of the tunnel, known as the upper tunnel on the Parish #2 lode?

(Testimony of F. J. Wettrick.)

A. I can give it to you approximately. I didn't determine it accurately. About forty-five or fifty feet.

Q. Has the debris or dump at the mouth of that working formed a kind of a level place or platform?  
[578]

A. Where? At the mouth of the tunnel?

Q. At the mouth of the upper tunnel?

A. No, not to any extent; it is a little steep there and falls down the hillside immediately.

Q. Do you know how much of an open cut there is to that tunnel before you get to the overhead?

A. That is from the place where the ground is first broken to the place under cover?

Q. Yes.

A. No, I do not exactly, but I think it is somewhere around eight feet—six or eight feet.

Q. You counted the work done during the year 1910 on the roadway leading from the Basin road to the compressor plant as part of the legal assessment work in making your patent returns?

A. I mentioned that—put that in under my list of improvements.

Q. When was that work done?

A. That was done some time ago. I don't know.

Q. It was not done in 1910? A. No.

Q. It was done in 1909?

A. That road? No, that is an old road—that was done when the chute was built.

Q. You are counting the whole road as worth \$100?



(Testimony of F. J. Wettrick.)

A. No, I have counted it more, I think—did I say \$100?

Q. I understood you to give the value of the rock work as \$960 and the total value of the work as \$1060?

A. If I stated that, it must be the way it is.

Q. So you were counting the original construction of the road in computing the assessment work, instead of counting the repair that had been done on it during the previous year? [579]

A. Rather, both. I am not so particular about actual figuring up what the cost of building a road like that is, when I have so much actual tunnel work on it.

Q. You didn't make the original computation then as to how much more work had to be done on that—you only made the return after you made the survey?

A. I didn't make any computation about how much work was to be done.

Q. Did you survey the property for patent before or after the work had been done in the upper and lower tunnels in the Parish #2? A. After.

Q. You know as a matter of fact that—this map was prepared by you and Hill in collaboration?

A. Under my direction, partly.

Q. You know as a matter of fact that that branch road from the Basin road doesn't start on the Parish claim at all, don't you?

A. It starts exactly where it is shown there, on the end line of the—

Judge WINN.—What is that?

Mr. SHACKLEFORD.—The branch road to the

(Testimony of F. J. Wettrick.)

compressor plant, from the Basin wagon road.

The WITNESS.—It is practically where it is shown, practically on the end line of the Forrest lode, where it branches off.

Q. It starts off the Forrest lode?

A. The end line of the Forrest lode is shown there and I think it goes right across the deflection from the main road on this sidehill. It may be a few feet inside.

Q. The Forrest line is about 6 feet to the right-hand side of [580] the Parish lode at that point as you look up the creek—6 feet to the inside of the Basin wagon road at that point, on that point at the right-hand side of it, looking up the creek.

A. Please state that again.

Q. At the place where this branch road from the Basin road branches off to the compressor plant, the Basin wagon road is about 6 feet in the Forrest claim and is not in the Parish claim, is it?

A. The Basin road traverses along the Forrest claim there as shown.

Q. And at that point the Basin road doesn't touch the Parish claim?

A. The Basin road does not, no—I believe not. Six feet? I wouldn't say that was 6 feet; it depends entirely upon what point you take as to where the road deflects—when you have got a six or eight feet road.

Q. I mean anything you would describe as the road if you were measuring it, putting it on the map.

A. I don't know whether it is 6 feet off or two feet

(Testimony of F. J. Wettrick.)

or right on it. I think it is right on it.

Q. The Forrest lode is not a part of the Ebner group of properties, is it?

A. Not to my knowledge.

Q. I understand you do not know who it was that originally told Mr. Mackey that he must do some more work on the Parish #2? A. Did I say that?

Q. Do I understand you to say that?

A. I don't know who first told him—I talked to him about it myself. [581]

Q. Now, how much work has to be done under the law to entitle the claimant to patent?

A. \$500 worth.

Q. And you had charge of the work and you insisted on keeping on until you were able to compute \$1,060 before the work was stopped?

A. No, that was not the idea that I insisted on having \$1,060 worth of work done.

Q. Did you tell them when to stop?

A. Not as I remember.

Q. Do you remember how the work came to be stopped?

A. It may be I told him I wouldn't drive any more or needed the men elsewhere. I don't remember just exactly what the conversation was.

Q. Do you remember any conversation at all about it?

A. I remember some conversation about doing some more work on the claim; yes.

Q. I am talking about the time the work was stopped.

(Testimony of F. J. Wettrick.)

A. I don't recall now any conversation on that point.

Q. Well, the work was started and you just let it run along? A. That is about the size of it.

Judge WINN.—He had nothing to do with letting it run along.

The WITNESS.—While I was in charge I continued the work.

Q. How far had you gotten in when you left control of it? A. On the upper tunnel?

Q. Yes—on either tunnel?

A. I don't remember, something like twenty feet or so. I don't remember exactly.

Q. Did you make any investigation as to the continuance of the lower tunnel, as to whether it would develop any ore body? [582]

A. I was in it; yes.

Q. I mean before you had the work started in that place? A. I had not; no.

Q. You don't know anything about the value of any particular spot on that ground with reference to drawing the development work to it?

A. Not by reason of anything it assayed myself; no.

Q. I understand that if either one of the parties to this action had seen fit to have erected a platform or built boards over that tunnel, there would not have been any interference with each other—so as to dump out beyond the place where the Alaska-Juneau people were working?

(Testimony of F. J. Wettrick.)

A. I can't say what would have happened from their people but there would not have been any trouble from ours, because all we wanted to do was to get the muck out of the tunnel, so they could drive some more.

Q. But you were anxious at that time to have them make a confession that it was necessary in order for them to do any work on that claim to protect you?

A. No, that wasn't the idea.

Mr. SHACKLEFORD.—That is all.

(By Judge WINN.)

Q. In making surveys generally for patent, I will ask you if there is anything in your rules and regulations which requires you to make a return of all the improvements upon any particular mining claim as covering improvements for a patent?

Objected to as incompetent, irrelevant and immaterial and not the best evidence.

Objection overruled. Defendant allowed an exception. [583]

A. I don't remember anything, any definite instruction, where all the work has to be shown in detail. If you have enough work showing upon the claim, tunnel work, you state it and you say so, which you desire to apply on that particular claim. That I have done.

Q. Does it require all tunnel work in order to get a patent—do you understand that to be the law?

A. No, sir.

Q. Will you explain what you mean by that?

(Testimony of F. J. Wettrick.)

What other mining improvements would be considered?

By the COURT.—That is a matter of law.

Q. I will ask you if in your return, in testifying to Mr. Shackleford, if you attempted to give all the improvements in the way of assessment work that had been done on these claims.

Objected to as not the best evidence. Objection overruled. Defendant excepts.

A. No, sir, I did not testify that I made a return of all the work upon the claim and I didn't want to necessarily leave that impression.

Q. I will ask you, Mr. Wettrick, as to whether or not you consider the stripping of a vein and removing the earth and such work as that, work that would count on patent work?

Objected to as incompetent, irrelevant and immaterial. Objection sustained. Plaintiff allowed an exception.

Q. I will ask you to state briefly to the Court what kind of work you consider necessary to be done on a claim in order to report that \$500 worth of work has been done in order to obtain patent?

Same objection. Objection sustained and plaintiff allowed an exception. [584]

Q. What do you consider as work that tends to improve and develop a mining claim so as to make it count on the work that is necessary for the \$500 worth, to obtain a patent—what kind of work?

Same objection. Objection sustained. Plaintiff allowed an exception.



(Testimony of F. J. Wettrick.)

Q. Have you any explanation to make about the work you found on this claim, as to what you counted in and what you did not count in and what you hunted for and what you did not hunt for?

Mr. SHACKLEFORD.—We object as not proper redirect examination and reserve the right to move to strike.

Objection overruled.

A. There was work upon the claim—that evidently had been done upon the claim, that I did not list in my returns as improvements, development work, because I saw that I had enough actual work done by tunnel work and open cut work, so that I did not have to hunt up and measure up the Borean placer pit and the smaller coverings of the veins over the claim; just that plainly visible and easily determined work that was done upon the claim we took.

Q. Did you have any conversation with Mr. Mackey—I couldn't understand and didn't follow you definitely, whether you did have a conversation with Mackey—about the work on the Parish No. 2 claim?

By the COURT.—You are referring to the same conversation brought out by Mr. Shackelford?

Judge WINN.—Yes, sir.

Objected to as not redirect examination. Objection sustained. Plaintiff allowed an exception.  
[585]

Q. Did you have any conversation with Mr. Mackey about the amount of work, etc., he should have done on this Parish #2 claim?

(Testimony of F. J. Wettrick.)

A. Yes, we talked it over.

Same objection. Objection sustained. Plaintiff allowed an exception.

Q. Mr. Shackleford questioned you something concerning a water notice that was posted by Mulligan. Where was this water notice that you saw up there posted, on what claim? A. On the Lotta.

Q. About what place on the Lotta claim—can you describe it to the Court?

A. Yes; some 190 feet up the creek from the place where the lower side line, that is the southwesterly line of the Lotta, crosses the creek. About forty feet, I believe, below where this notice was posted at that time there were two troughs, triangular troughs, through which water was running and held down by stones.

Q. You say those troughs are how far up above the present dam of the defendant company?

A. Some 140 or 150 feet, if I remember exactly.

Q. What time, if you know, did they change the place to build a dam in regard to the hearing on the application for a temporary restraining order?

A. You say about what time?

Q. Yes, with respect to the hearing on the application for a temporary restraining order—what time did they come down the creek and commence to build a dam where they finally erected it?

A. I don't remember exactly the date. If I looked it up in my [586] note-book and found out the date of the hearing, I could tell.

Q. Do you know about what time they came down

(Testimony of F. J. Wettrick.)

the creek and commenced constructing the dam or commenced constructing the dam where they eventually did build it?

A. The exact date I don't remember, but it was some time during the latter part of September or first part of October—no, the latter part of September, I think. I was up there intermittently and I don't remember those dates so very well.

Judge WINN.—In looking over the papers in this case with the idea of coming to a conclusion of our case soon, I find that I have not had Mr. Ebner verify this answer yet and I shall wish to strike out some portions of the answer that I indicated to the Court at the time I read the answer over, by reason of having eliminated from the complaint the Cape Horn claim. At the time I offered to file the answer here I stated I would have to await Mr. Ebner's arrival before verifying the pleadings, and also stated in my opening statement to the Court that I desired the answer to conform to the pleadings as they are after we struck out or left out that cause of action pertaining to the claim. \* \* \* I want the pleadings straightened out to make it conform to all this testimony as to where these claims are located.

Mr. SHACKLEFORD.—With reference to your application for amendment, I would like to have it made a matter of record \* \* \* that the Cape Horn claim is the property of Mr. Ebner and not the property of the Ebner Gold Mining Company. I desire to have that admission in the record as the admission you made.

(Testimony of F. J. Wettrick.)

Judge WINN.—That is right. We dismissed that part of the complaint for the reason that upon investigation I had found out that Mr. Ebner held title to that claim—the Cape Horn [587] lode. Is it the Cape Horn or the Cape Horn #1—whichever it is in the complaint.

Mr. BURTON.—The Cape Horn #2.

Q. I believe Mr. Shackelford asked you the question whether or not you advised Mr. Mackey that there would have to be some more work done upon the Parish #2 lode claim before application for patent was made—did you ever advise Mr. Mackey anything of that kind?

A. We had conversations about that, looking toward the acquisition of title to the Parish #2, and I remarked that it would be better to have some more tunnel work done upon it because of the fact that some of the other work had been caved in a little bit as is the habit there, some of the ground would not show up plain enough, and that I wanted to be sure that there was enough visible and permanent work there so my return would be right.

Q. Is there or is there not any surface ground of those claims there subject to slides? A. Yes, sir.

Q. Now, I will ask you, Mr. Wettrick, whether or not the mere fact that these people were running around over this property up there and attempting to build trails and do work, whether the fact that there was a contest on hand had anything to do with your requesting that the work show up properly on these claims in order to make application for patent?

(Testimony of F. J. Wettrick.)

Mr. SHACKLEFORD.—We object to that as leading, incompetent, irrelevant and immaterial.

Objection sustained as leading.

Q. Were there any other reasons why you advised this tunnel work that you speak of?

Same objection. Objection overruled. Defendant allowed *an* [588]

A. No specific reasons that I remember why I advised it—I don't remember my mental operations, exactly.

Q. Did you know at that time that these other people were building trails and doing some other work on the property?

A. Yes; I might have been influenced by the fact that I wanted to be sure if any controversy did arise that I could certify to work upon the claims that would stay there—would not be caved in or washed away.

(By Mr. SHACKLEFORD.)

Q. As a matter of fact, if the work was valid assessment work, whether it caved in or had not caved in, if you had proof of it, you could get your patent?

Judge WINN.—We object to that as incompetent, irrelevant and immaterial and improper cross-examination.

Objection overruled. Plaintiff allowed an exception.

A. Yes, if you can measure it up and make the proper returns, but if it were caved in, you couldn't measure it up.

Q. Suppose you didn't measure it up. Suppose

(Testimony of F. J. Wettrick.)

you had your affidavits of the work?

A. You could get your patent just the same; yes.

Q. With reference to that, you made no return?

A. About any work having caved in? No, did not have to.

Q. And all you have to say about it on this examination is that the property is subject to slides?

A. Yes.

Q. But you had to make a certificate under oath that a certain amount of work had actually been performed on that ground? A. And describe it.

Q. In order to satisfy yourself completely about it you asked them to do this work? [589]

A. I remarked that some more work had better be done, so it would be visible and permanent there when I made my returns.

Q. That was to satisfy yourself about it and protect you in making your oath?

A. That was largely it.

Q. Has application for patent been made for the Parish?

A. Certainly not. Application for patent cannot be made until the survey is finally accepted by the surveyor general. The survey was transmitted to the surveyor general's office on April 20th and the surveyor general's office has not yet got to it.

Q. (By Judge WINN.) You completed the work as far as you know—it was just sent back for correction.

A. Certainly; my work is all done in connection



(Testimony of Fred M. Ridell.)

with it—the rest of it is attorneys' work.

Witness excused. [590]

**[Testimony of Fred M. Ridell, for Plaintiff.]**

FRED M. RIDELL, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. When did you come to Alaska?

A. The 11th of September, 1910.

Q. You know Mr. Mackey? A. Yes, sir.

Q. Did you go up on this Ebner property some time last summer to do some work?

A. Yes, the 13th of September, 1910.

Q. What were you doing up there?

A. Working on the flume grade intake, starting there.

Q. That was the high line flume?

A. That was the high line flume.

Q. I will ask you, do you know where there is a line brushed out from an old cabin on the left-hand side of Gold Creek as you go up the creek, and brushed on down through the creek and practically across the creek and up to the wagon road?

A. Yes, sir.

Q. Did you have anything to do with the brushing out on that? A. Yes, sir.

Q. Did you know a man named Hunsucker up there? A. Yes, sir.

Q. Who was Hunsucker?

A. He was the watchman for the property.

(Testimony of Fred M. Ridell.)

Q. I will ask you if you know anything about a road being built and a notice being posted up down on the road that leads from the regular wagon road to the Ebner ore compressor? [591] A. Yes, sir.

Q. Do you remember about the time that fence was built? A. Yes, sir.

Q. About what time was it?

A. I believe that fence was put up there about the 23d or 24th of September, somewhere around there.

Q. And when was the notice put up?

A. The notice was put up the day the fence was put up.

Q. Do you remember who put up the fence—do you know?

A. Middleton and myself and a man named Greenwood carried the boards to the fence and Hunsucker was waiting for us and we put up the fence.

Q. What was your object in putting up the fence?

A. The idea of the fence and notice was to keep people off the property.

Q. Who did you think was coming on the property?

A. I don't know. There was simply a notice put up to keep people off.

Q. Now, at the time you put up that fence and put up the notice had Kinzie's people put any lumber or poles on any of the ground?

A. They had put some two-inch planks up on the road, about ten of them—right on the main wagon road.

Q. Right opposite the road leading to the com-

(Testimony of Fred M. Ridell.)

pressor—that is where they had the planks then?

A. Yes, sir.

Q. Do you remember any time they brought any poles or logs down there?     A. Yes, sir.

Q. When was that? [592]

A. That was about the latter part of September, I think, somewhere around there. I was working on this road at the time.

Q. Was it after that fence was put up or notice put up or before that they brought the poles?

A. It was after the notice was put up and the fence was put up that the poles were brought up.

Q. Do you know a fellow up there that lived in a little cabin down by the Snowslide Gulch by the name of Harry?

A. Yes, just know him by talking to him and knew his name was Harry.

Q. A lame fellow?     A. Yes, sir.

Q. Did you ever have any talk with him as to whose employ he was in?

A. Just simply when I was working on the mill grade. After the first of October I used to have the job of bringing up all the dull steel and take it to the tool place or to the blacksmith-shop—we didn't have any on the mill grade, and I had a conversation with him on the Cape Horn concerning the property the people were working on.

Q. Did he tell you that he had been instructed by Kenzie to make certain investigations on some mining property up there and report to Kenzie about it?

Mr. SHACKLEFORD.—We object to that as in-

(Testimony of Fred M. Ridell.)

competent, irrelevant and immaterial and hearsay. Whoever Harry was, there is no evidence here that he was connected with the corporation in such a way that the corporation was bound by what he said.

By the COURT.—The objection will be sustained. You may make your offer. [593]

Judge WINN.—We wish to prove that Mr. Ridell had a talk with this man Harry, in which conversation he stated to Ridell that he had been sent up there by Kenzie to look over the Parish #2 and to find out whether in his (Harry's) opinion the assessment work had been kept up on it, and that Harry reported back to Kenzie that it had been, and Harry said he did not know why it was that he was kept up there to go ahead and do the work but that he was ordered to do so by Kenzie.

Offer refused. Plaintiff allowed an exception.

Q. Were you ever upon the claim down there about where this line was brushed out on the Parish #2 when any of Kenzie's people came up?

A. Yes, sir.

Q. What day was that?

A. That was about the 27th of September. Mr. Hendrickson brought down three or four men there, I believe it was, had about three men and had picks and shovels and they started to go down the creek. I was given orders by Mr. Black, who was then the foreman, that if anybody came to work on the property to go and tell him, which I did, and I went up and told Black, and Hunsucker was over in the old Ebner boarding-house and Mr. Black he went down

(Testimony of Fred M. Ridell.)

the road and Hunsucker and I went down by the compressor, went down the creek and they were there starting to pile up boulders. That was the first time they came there to work, and Hunsucker told them where they were working was patented ground and to leave it, which they did very peaceably.

Q. Was that the only time you were there when they were ordered off? [594]

A. That was the only time.

Q. You were not there when this skirmish took place on October third?

A. No, I was down on the mill grade, the first of October.

Q. And you were not there the day Wettrick and these gentlemen were arrested? A. No.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Was that the first time you had ever been up anywhere on that ground—on that grade?

A. That was the first time I saw them down on the creek.

Q. You don't mean to say that was the first time you were there.

A. That is the first time I saw them right there on the creek.

Q. I understand it was the first time you saw them there? A. In this one particular spot?

Q. Along that grade?

A. At this one particular spot I am talking about

(Testimony of Fred M. Ridell.)

—I am not talking about the flume grade or anything else.

Q. You saw them on the flume grade before that?

A. I saw them working on the flume grade when I first went up there.

Q. That was the first time you saw them at that particular place?

A. At that particular point, yes.

Q. They might have been there when you didn't see them?

A. They might have been there night-time, any day, when I didn't see them.

Q. There were lots of times when you have been there when you didn't see them?

A. Certainly. [595]

Q. Where were you at that time and what were you doing?

A. I was working on this little branch road that came off the main wagon road—I was widening out the road, fixing it up, taking trees and rocks off of it.

Q. When did you commence there?

A. I commenced there in 1910, about the 22d, or about the 23d or 24th of September—somewhere around there. I don't know the exact date.

Q. About the 23d or 24th of September when you went to work on this wagon road—you were working on the flume up on the hill?

A. I worked there and all around there. I did general all-around work.

Q. Where were you before you went to work on this road? A. I was working on the flume grade.



(Testimony of Fred M. Ridell.)

Q. When you were on the flume grade you couldn't see what was going on on the other flume of the Alaska-Juneau?     A. No.

Q. So you don't know what happened there before you went on there on the 24th?     A. No.

Q. And you didn't see anybody between the 24th and the 27th?     A. About that.

Q. And about the 27th at this particular point—

A. At this particular point I am talking about.

Q. And about the 27th you saw Hendrickson and two or three men working there?

A. Yes, sir.

Q. And you have told how Hunsucker came down?

A. Hunsucker and I came down.

Q. And told them they were on patented ground?

[596]

A. Hunsucker was watchman—he told them, he served them the notice.

Q. And they went away and afterwards came back again?     A. I don't know anything about that.

Q. You were not there after that day?

A. No, it was the next day that Mr. Mackey sent me down to the mill grade.

Q. And you don't know what occurred?     A. No.

Q. What kind of a fence was this?

A. It was a regular common fence.

Q. Just one length of boards?

A. No, sir, we had three or four lengths of boards, —two posts set up, one at each end and had three boards run across and the cross-board ran from point to point.

(Testimony of Fred M. Ridell.)

Q. This fence was not an enclosure that enclosed anything? A. It enclosed that road.

Q. It was built across the road?

A. Yes, it was built across the road.

Q. There was a gate on the road?

A. This fence was on the road.

Q. There was a gate? A. No gate.

Q. The thing was boarded up? A. Yes, sir.

Q. How many boards?

A. We had two posts and three or four boards and had a cross-board that went from one point on the post to the other point.

Q. There were two posts—one on each side of the road? A. Yes, sir. [597]

Q. Those were the ones you put in?

A. Yes, sir.

Q. Then you put two boards, put them across?

A. No.

Q. How many boards?

A. Three or four boards.

Q. You took another board and nailed it to the post and laid it on the ground?

A. No; we nailed it from one point to the other, from the far point to the lower point of the other post.

Q. I mean outside the posts, that is between the posts you had the boards—there was only two posts?

A. Yes.

Q. And between the posts you had three or four boards?

A. Not between the posts. We had them across

(Testimony of Fred M. Ridell.)

from post to post.

Q. And then you nailed the board against the post—that is, the board was nailed on one end against the post, permitting it to run on the other end, on each side of the post? A. Yes, sir.

Q. And that fence was built immediately on the side of the Basin road? A. No, sir.

Q. How far from the Basin road?

A. I imagine one point was on the Basin road, likely, and the other point was about ten or fifteen feet from the Basin road.

Q. How long was the fence?

A. About fifteen feet, I imagine; somewhere around there.

Q. Now, this road you speak of branches off from the Basin road?

A. From the main wagon road; yes, sir. [598]

Q. You built the fence across that road?

A. Across here.

Q. It was parallel with the Basin road? A. No.

Q. One end was up the Basin road and the other shot off? A. Yes, sir.

Q. It was on that post you posted the notice?

A. Yes, sir.

Q. What day was that done?

A. Around the latter part of September, the 23d or 24th—somewhere around there. I don't know the exact date.

Q. You did some more work on that same road?

A. Yes, sir.

Q. While you were working there you saw men

(Testimony of Fred M. Ridell.)

working on the flume grade of the Alaska-Juneau Company? A. No, sir.

Q. Did you not at that time see men working along the grade there at different places?

A. No; they were down at the lower end, but I couldn't see on account of the hill blocking me.

Q. That was the reason you couldn't see?

A. Yes, sir.

Q. The work on the upper flume when you commenced there had just commenced?

A. The 13th of September I commenced to work there—Black was there before I was.

Q. The work had just commenced on the 13th of September? When you went up there?

A. No, Black was working before I did. I started to work there—Middleton and I, started on the 13th of September. [599]

Q. The preliminary survey had been made?

A. I believe it had been as far as I know—I don't know. I saw some stakes there which I presumed were for the grade.

Q. And that was the first you ever saw of the place? A. Yes, sir.

Q. You never saw any men there or anyone else—you were not up there in the Basin or on the Ebner property until the 13th of September?

A. Exactly.

Q. Before that you were away from there?

A. Yes, before that I was away from there.

Q. And that is the reason you didn't see anybody there? A. That is the idea.

(Testimony of Fred M. Ridell.)

Q. And the 24th is the day you went down there?

A. About that time. I don't know the exact date.

Mr. HELLENTHAL.—That is all.

Witness excused. [600]

[**Testimony of Angus Mackey, for Plaintiff  
(Recalled).]**

ANGUS MACKEY, recalled:

(By Judge WINN.)

Q. Mr. Shackleford questioned Mr. Wettrick considerably about the time that work was commenced on the upper tunnel on the Parish Number 2 lode claim. Now, I will ask you if at the time the preliminary hearing came off before Grover Winn, when you were arrested, if there had been at that time any work done, either on the open cut that leads to the upper tunnel or on that upper tunnel?

A. Yes, there had been work done.

Q. I will ask you as to whether or not at the time of that hearing any understanding was had with Mr. Rustgard, the prosecuting officer present, and Mr. Hellenthal, who was representing Mr. Kenzie, and Mr. Burton who was representing your people, concerning as to whether or not you could continue work on that upper tunnel?

Mr. SHACKLEFORD.—We object to that as leading. May I inquire whether you are referring to the first arrest or the time of the injunction suit?

Judge WINN.—At the time Mr. Mackey was arrested. I want to show that at that time Mr. Hellenthal was there representing the Alaska-Juneau Company \* \* \* it was not a part of the trial.

(Testimony of Angus Mackey.)

Mr. Mackey made the inquiry whether or not they could continue work on this tunnel up there without being molested and arrested and there and then Mr. Kenzie, there being represented by Mr. Hellen-thal, the prosecuting officer and Mr. Burton there,—it was understood they could go on and work there and dump as we have been dumping—just the thing that Mr. Shackelford has been questioning Mr. Wettrick about for such a length of time to show we moved up there [601] purposely to dump that stuff down there and disturb these people, etc. It is to show the good faith we have been in and to show the bad faith of these other people.

Mr. HELLENTHAL.—Judge Winn has not made any offer of proof that either Mr. Kenzie or myself agreed to anything. I want to say that neither Mr. Kenzie nor myself agreed to anything—I don't know what Mr. Rustgard agreed to and don't care. I didn't say a word about it and Mr. Kenzie didn't say a word about it, and the whole thing is merely in the imagination of counsel.

By the COURT.—Recite your offer.

Judge WINN.—I expect to show by Mr. Mackey that while Mr. Hellenthal and Mr. Kenzie were present and in the presence of Grover Winn, in the presence of Mr. Rustgard, the district attorney, and Mr. Burton and perhaps someone else, I don't know, but that Mr. Mackey eventually asked the question whether or not he was going to be permitted to go ahead and do work upon the Parish #2 claim and in that tunnel that they had commenced, the upper



(Testimony of Angus Mackey.)

tunnel, the one which Mr. Shackleford questioned Mr. Wettrick about, and it was there and then understood between all parties, Mr. Hellenthal representing the civil side and Mr. Rustgard representing the criminal side and Mr. Burton representing our side, that we were to go on and work and dump out of that very same tunnel out of which the arrests subsequently grew of Wettrick and the other four people, and *it to* show that we were trying to go ahead and do the work that was necessary to open up and develop these claims without molesting these people.

By the COURT.—If you want to show that Mr. Hellenthal was representing Mr. Kenzie and the Alaska-Juneau, the defendant [602] company, agreed to such an arrangement as that you may go on and show it.

Mr. HELLENTHAL.—If there is no evidence that I agreed to it, it will be stricken?

By the COURT.—Yes, unless the defendant is connected with it the arrangement would not have any effect.

Last question read to the witness as follows:

Q. I will ask you as to whether or not at the time of that hearing any understanding was had with Mr. Rustgard, the prosecuting officer present and Mr. Hellenthal, who was representing Mr. Kenzie and Mr. Burton who was representing your people, concerning as to whether or not you could continue work on that upper tunnel.

Judge WINN.—Answer that by yes or no.

(Testimony of Angus Mackey.)

A. Yes.

Q. I wish you would state what took place there in the presence of the gentlemen I have just mentioned in my last question, the conversations.

Same objection. Objection overruled. Defendant allowed an exception.

A. Well, as well as I can remember, after the trial I asked Mr. Rustgard whether we would be permitted to work up on that tunnel on Number 2, that we wanted to do some more work on it and he said that there was nothing, that we could go right ahead and wouldn't be troubled—the only thing was we were to notify any people down below that we were going to blast.

Q. Was Mr. Hellenthal there? A. I believe so.

Q. And Mr. Kenzie? A. I think he was. [603]

Q. And Mr. Burton?

A. And Mr. Burton and Mr. Bayless, I believe.

Q. And that was the upper tunnel?

A. That was the upper tunnel.

Q. How much work, if you remember, had been done on that upper tunnel at the time this conversation took place and the time of your preliminary hearing before Grover Winn?

A. Well, we had just started the open cut at that time, I don't think we had gotten underneath, under cover—we were trying to get under cover. We might have been under cover, too; I don't know.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You started that work there somewhere after

(Testimony of Angus Mackey.)

the first of October, didn't you?

A. No, we started it in September.

Q. The latter part of September? A. Yes.

Q. And you drove a little open cut and faced up for a tunnel? A. Yes, sir.

Q. About this conversation before the commissioner—you asked Mr. Rustgard, you say?

A. Yes.

Q. Whether you would be permitted to go up there, whether there was any reason why you shouldn't go up there and continue that tunnel—that was the purport of your question?

A. Yes, sir, that is what I asked him.

Q. And what was Mr. Rustgard's reply?

A. Well, I couldn't exactly state his exact words.

Q. I mean the substance of it. [604]

A. We could go up there and work, that it didn't hinder our people going ahead with our work in the Number 2 tunnel, and we could work right straight along as long as when we blasted we give warning to the people below.

Q. As long as there wasn't anybody hurt?

A. Yes; as long as there wasn't anybody hurt.

Q. I didn't say anything about that and I wasn't in that conversation, was I?

A. I don't recollect—you were in the room at the time I asked, I think.

Q. I may have been in the room. A. Yes, sir.

Q. You don't know whether I heard anything about that? A. I wouldn't swear to it.

Q. You know, I didn't say anything about it one

(Testimony of Angus Mackey.)

way or the other.

A. No, I don't think you said anything to me about it at all.

Q. Or anybody else?

A. I don't know as I heard you say anything.

Q. Or Mr. Kenzie either?

A. I wasn't speaking to Kenzie about it.

Q. He didn't say anything about it?

A. In the open court, no—not in my hearing.

Q. Did anybody say anything but you and Mr. Rustgard?

A. I just asked the question of Mr. Rustgard.

Q. And he said there wasn't any reason why you should not—

A. No reason why we should not go ahead with our work.

Q. And that is all there was to it?

A. That is all. I didn't want to go in conflict with the law.

Q. You wanted to know what work you could do without putting yourself in the position where you would be prosecuted?

A. Yes, where I could be arrested. [605]

Q. And you asked the question of Mr. Rustgard for that purpose? A. Yes, sir.

Q. And he made the reply—

A. I asked the question for the protection of our people. We didn't propose to do work where we would get into the clutches of the law.

Q. And Mr. Rustgard made this reply to you and you took him at his word and went to work—that is

(Testimony of Angus Mackey.)

all there was to it?

A. Yes, he seemed to be acting for the 'Treadwell Company at the same time.

Q. You know he was acting as United States attorney?

A. He always called it our company—I know that Mr. Hellenthal.

Mr. HELLENTHAL.—I move to strike this testimony.

By the COURT.—The testimony, so far as having any bearing on the consent on the part of the defendant company is concerned, has no application and has no effect, but as bearing on the good faith of Mr. Mackey and on the questions attempted to be elicited by Mr. Shackelford—the answers, rather—it may stand for that purpose, showing he was not going back without it being known.

Q. Was there any conversation or discussion at that time about the dumping of the debris on the flume-line—I don't mean this particular time, but during the progress of this trial, with reference to the dumping of debris on the flume-line?

A. No, there was no flume-line there—there was no work done underneath us at that time.

Q. Not at that point?      A. No.

Q. There was a question about rolling rocks and dumping debris [606] on the flume-line elsewhere?      A. Up on the Lotta claim.

Q. Up right below where the dump is now?

A. Yes, that is the only place.

Q. The men were working at that time—the

(Testimony of Angus Mackey.)

Alaska-Juneau people—when this trouble occurred? They were working right near the place where the present dam is?

A. Well, they were working probably near Snowslide Gulch, that is, on the grade.

Q. On the first of October, on the grade, they were working up there, a gang of men?

A. But there was also some men working right below, where the present dam is.

Q. Along about the first of October?

A. You are speaking about the upper tunnel?

Q. No, I am speaking of the dam—along about the third or fourth of October, along about where the dam now is—that is true, is it not?

A. I believe there had been some start made up there somewhere on the site of the dam, but right underneath the upper tunnel there was nothing done.

Q. Underneath your upper tunnel the flume had not been laid at that time?

A. No, the flume grade.

Q. They were working at both ends and hadn't struck that point yet—they were working at the Snowslide Gulch end, towards that end and also at the upper end, and that tunnel is between those two points?

A. I wouldn't swear positively. I can't recollect whether they were working at the upper end, but they were down towards Snowslide Gulch. [607]

Q. You know what this trouble in October was caused by—the work on the upper end?

A. You mean the work on the flume or dam?



(Testimony of Angus Mackey.)

Q. In that neighborhood?

A. Yes; that is where the trouble started in. I thought you meant on the flume grade.

(By Judge WINN.)

Q. I will ask you if any more work was done on the upper tunnel on the Parish #2 after the arrest of Wettrick and others.

A. No, there was no more work done.

By the COURT.—This is in November?

Judge WINN.—Yes, sir.

Q. Why did you cease work there then?

A. I didn't want to get into any more trouble and didn't want the men to get into any trouble. I could see then the District Attorney had—

Judge WINN.—Never mind that.

Q. Did you have any place to dump?

A. Not without dumping over that ground, on account of the steep hill.

(By Mr. HELLENTHAL.)

Q. At that time or shortly after that an application was made asking for an injunction against the destruction of the flume at that point? Suit was brought by the Alaska-Juneau people against your people asking for an injunction, to enjoin you from destroying the flume at that point?

A. I believe so.

Q. And Judge Lyons made the order enjoining you from destroying the flume? [608]

Judge WINN.—I am going to offer in evidence the order of the Court and the papers in that case. Mr. Mackey doesn't know about that.

(Testimony of Angus Mackey.)

Q. Under the order of Judge Lyons you could have dumped there had you built the cover over the flume, could you not?

A. If we went to unnecessary expense; these other people ought to take care of their own flume, which I would have done if it had been me—I would have taken care of my flume.

Q. Judge Lyons permitted you to work there providing you covered up the flume?

A. I don't know.

Objected to as not the best evidence. Objection sustained.

Q. You could have worked there if you had covered up the flume.

Judge WINN.—That is conceded. If we had gone down on what they claimed to be their ground and gotten into trouble again, I presume we could have covered it over and worked there—we object to it. Objection sustained.

Q. You could also have built a platform extending out over the portal of your tunnel from the open cut, so you could have run your muck out over that platform and dump so as to clear the platform?

Objected to. Objection overruled. Plaintiff excepts.

A. Certainly, that kind of work could be done, but still at the same time, it was not our business to do that.

Q. That was the reason you didn't do it—because you didn't think it was your business to do it?

(Testimony of Angus Mackey.)

A. Certainly; it would put us to an unnecessary expense.

Q. It wouldn't be a great item of expense?

A. That is what your people think—that was the object— [609]

Q. That wouldn't be much?

A. Everything adds to those things.

Q. It wouldn't cost much to build that platform?

A. Not a great deal; no.

Q. The reason you did not was not because of the expense, but because you felt you should not be called upon to do it?

A. I did not care about taking any risk to get into any further trouble on the ground.

Q. You would not have gotten into any trouble if you built that platform?

A. I don't know. I wasn't very well satisfied in my own mind about that.

Mr. HELLENTHAL.—That is all.

Witness excused. [610]

**[Testimony of Lloyd Winters, for Plaintiff.]**

LLOYD WINTERS, a witness called and sworn in behalf of the plaintiff, testified as follows:

**Direct Examination.**

(By Judge WINN.)

(It is admitted by counsel that Mr. Winters is a qualified photographer.)

Q. Did you go up there to the Ebner mines yesterday? A. I did.

Q. In company with Mr. Ebner? A. I did.

(Testimony of Lloyd Winters.)

Q. And took some photographs up there?

A. Yes, sir.

Q. I will ask you if this is one you took up there (handing witness photograph).

A. Yes, sir.

Q. The objects shown on there are what—what is shown in that photograph?

A. In this particular photograph we showed the course of the waterfall and the dam on this lower right-hand corner.

The photograph is marked Plaintiff's Exhibit "U" for identification.

Q. I hand you another photograph and ask you if you took that? A. Yes; yesterday afternoon.

Q. Did Mr. Ebner tell you what particular objects he wanted to show on that picture? A. Yes, sir.

Q. What object is it?

A. The stake just across from the dam.

Q. Does it show the dam, too?

A. This old dam in the foreground and flume opposite the Ebner flume and the stake close to the flume.

[611]

Q. What dam is that—do you know?

A. I don't know that it has any name.

Q. Is it above the Ebner mill or below it?

A. Above.

Q. You don't know what stake that is claimed to be? A. Only what you see there.

(The photograph is marked Plaintiff's Exhibit "V" for identification.)

Q. Now, I hand you another photograph and ask

(Testimony of Lloyd Winters.)

you if that is one taken by you yesterday?

A. Yes, sir.

Q. What particular object did Mr. Ebner state he wanted to include in that?

A. The stake upon this little hill to the right.

Q. Is there anything else shown there?

A. The bridge in the foreground and this cabin.

(The photograph is marked for identification, Plaintiff's Exhibit "W.")

(By Mr. SHACKLEFORD.)

Q. Show me the stake on the picture.

A. The stake is indicated by an additional stake placed on the top, wrapped in white paper, so that it may be plainly seen in the photograph.

Witness excused. [612]

[**Testimony of Ed Webster, for Plaintiff (Recalled).**]

ED WEBSTER, a witness called and sworn in behalf of the plaintiff, testified as follows (recalled):

Direct Examination.

(By Judge WINN.)

Q. I hand you a picture which has been marked for identification, Plaintiff's Exhibit "W," and ask you if you have seen this picture before you came on the witness-stand?

A. Yes, I saw it last night at Winter & Ponds.

Q. I will ask you to point out to the Court any particular stake indicated on that map there that looks like a survey stake—do you observe one on there? A. I don't know which it is now I am sure.

Q. It is not marked, but it is a stake that is indi-

(Testimony of Ed Webster.)

cated up here? A. Yes, there is one there.

Q. That is the one?

A. That is what they said was a stake.

Q. Now, when you were on the witness-stand the other day you said something about a stake being up there somewhere near a cabin that was there when you left there, and you called it and designated it as one of the stakes, I think, at the intersection of some one of the Ebner group of claims with your millsite?

A. Yes, sir.

Q. Now, that stake just pointed out to you on this map, which we will mark "a," what about the relative position of that stake to the stake you testified concerning the other day, in that vicinity?

Mr. HELLENTHAL.—We object on the ground that the testimony sought to be elicited is incompetent, irrelevant and immaterial and that the Lotta claim is not tied to any monument or [613] other claim connected with this stake.

Objection overruled. Defendant allowed an exception.

A. That stake is just about as I had seen it, only I see by the picture here that the log cabin is gone—there is nothing but a frame building there; the log cabin stood right here (indicating).

Q. Put your finger on the post we are talking about.

A. Right there (indicating).

(It is marked "a.")

Q. Now, I wish you would indicate on this identified exhibit "W" of plaintiff about where the old log



(Testimony of Ed Webster.)

cabin stood that you testified concerning the other day? A. The log cabin stood right here.

Q. Put your finger there.

A. Right there (indicating).

(It is marked "b.")

Q. Now, I hand you another exhibit, which we have marked "V" for identification, and call your attention to a bridge and stake and we will have this stake marked afterwards "x."

A. That is the one that I said was across the dam from our dam, where we had the dam cross the creek on the hillside.

Q. Put your finger on the one you refer to.

A. Right there (indicating).

(It is marked "x.")

(By Mr. HELLENTHAL.)

Q. That stake on this last picture marked "V" shown you, is that the one you testified was from ninety to one hundred feet from the dam?

A. Yes, sir.

Q. Now, as far as this photograph is concerned, it would appear the same whether that stake had been moved fifty feet—it wouldn't make any difference in the appearance of the photograph? [614]

A. Not to my knowledge, no, but in my opinion that is just about where I seen it across from the dam.

Q. That is the way it looked to you?

A. Yes, sir.

Q. Had the stake been moved fifty feet as far as the appearance of the picture is concerned—it

(Testimony of Ed Webster.)

wouldn't change the appearance of the stake on the picture materially?

A. I don't know because I never saw a picture of it before.

Q. You do not know how it would look if the stake had been moved fifty feet? A. No.

Q. The stake, however, upon the ground as you remember it—

A. Yes, that is on the ground as I remember it.

Q. Was from ninety to one hundred feet—

A. Yes, to the best of my knowledge.

Q. You wouldn't say it was less than ninety?

A. Well, it might be; yes.

Q. How much less might it be?

A. I don't know. I have not been on the ground for a long long time; it was just in my mind it is about that far. It is quite a few years since I was on the ground.

Q. And you wouldn't say it was more than 100 feet?

A. Well, I would say it was between 90 and 100 feet to best of my knowledge.

Q. A stake approximately 200 feet away from the dam wouldn't be the stake you are now referring to?

Judge WINN.—We object to this and the preceding question as incompetent, irrelevant and immaterial and not proper cross-examination and not founded on the evidence. Objection overruled. Plaintiff excepts.

Q. If there was a stake found there approximately

(Testimony of Ed Webster.)

200 feet away [615] from the dam, it wouldn't be the same stake? A. I don't think so.

Q. As to Exhibit "W," the log cabin, you say, with reference to which you testified, is no longer *that*? A. No, it is gone.

Q. The boarding-house of the Humboldt people is still there? A. Yes, sir.

Q. And was there at that time?

A. That was built after I left the place; that was built since 1898, after they took the mine.

Q. And as near as you can recall the old cabin stood about where the letter "B" is?

A. Yes, as near as I can recall.

Q. Where is that stake?

A. Right in here (indicating).

Q. Marked with the letter "a"? A. Yes.

Q. That stake then was down the creek from the cabin?

A. Well, it was off to the left of the cabin, facing toward the bridge and a little on the hillside.

Q. And as to this stake, could that have been moved a few feet one way or the other, without showing on the picture?

A. It could be moved and I wouldn't probably know exactly it had been moved, but it seemed to be just as my mind had seen it then.

Q. According to your recollection it looks as though it was in the same place? A. Yes, sir.

Q. But you wouldn't say it is in the same place?

A. No, I could not.

Q. It has been a good many years since you were

(Testimony of Ed Webster.)

up there? [616] A. Yes, sir.

(By the COURT.)

Q. Which way was Mr. Garside surveying from—down this way, down the road from your millsite?

A. He came from this way up.

Q. That is, from Juneau up the creek?

A. Yes, sir.

Q. Did you have any controversy about where his lines could cross your millsite?

A. No; he ran the lines through there and staked the stakes, and when I found they had run through the millsite I went to him and asked him about it, and he told me they just wanted to square up their end lines and they would exclude this piece of the millsite.

Q. There wasn't any change made in the line because you made a fuss about it?

A. No, when they got the patent, they excluded this piece.

(By Mr. HELLENTHAL.)

Q. He started from the lower end, from the Lotta up towards the Crown Point?

A. He started from down this way and came across where the Ebner mill is and ran up the creek.

Q. He surveyed up the creek?

A. Yes, that is the way he was coming.

Witness excused. [617]

**[Testimony of J. A. Dolfelmyer, for Plaintiff.]**

J. A. DOLFELMYER, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. How long have you been in and about Juneau?

A. Since last September.

Q. How long have you been in Alaska altogether?

A. Since 1903.

Q. Did you do any work for Mr. Mackey this last summer up on the Ebner property?

A. Yes, I was employed there.

Q. When did you go there?

A. I went to work on the 19th day of September, 1910.

Q. What were you doing?

A. Pick and shovel work.

Q. Now, we will get down to the Lotta and Parish #2 claims. You have been over those claims and looked up the stakes and found out about where the claims are as located on the ground? A. Yes, sir.

Q. Did you, during 1910, last summer or during the fall do any work on what is claimed to be the Lotta lode claim, last year—1910?

A. Yes, I did some work.

Q. When was that?

A. The first work I did was on the 28th day of September.

Q. What were you working at, what were you doing? A. I was building a trail.

Q. On what claim? A. On the Lotta.

(Testimony of J. A. Dolfelmyer.)

Q. Where was that trail leading from and to what place? [618]

A. Leading from what is called the lower tunnel or a point immediately above it, in the direction of the Ebner boarding-house.

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial and after the entry of the plaintiffs—I desire to have it understood that the rest of this testimony goes in subject to my objection and exception.

By the COURT.—It is so understood.

Q. Did anyone come up on that property or the Parish #2 on that day besides the people you were working for and with you?

A. Yes, sir, a surveyor passed us while we were at work.

Q. What surveyor?

A. I don't know his name and haven't yet learned his name. He was a young man.

Q. Do you know Mr. Kenzie? A. Yes, sir.

Q. Was Mr. Kenzie or any of his people up there that day, the 28th?

A. I didn't see Mr. Kenzie on the 28th; no.

Q. Did you see any of his people up there doing any work on that day?

A. No, I did not see any of those people.

Q. How long did you continue to work on this claim, the Lotta?

A. On the 28th I went to work, about half-past three in the afternoon, and continued until five o'clock.



(Testimony of J. A. Dolfelmyer.)

Q. Then the next day what did you do?

A. The next day I was back on the work on the high line flume.

Q. That was the 29th?      A. Yes, sir. [619]

Q. When did you come back on the Lotta to do any work?      A. On the third day of October.

Q. What were you doing there on the third of October?

A. About 9 o'clock the foreman came to where I was working—Mr. Reardon and Moore were working with me—and told me to bring our tools and go with him, and we went to a point up the creek, two or three hundred feet from where we were on the 28th, and we were told to build a trail there—cut out the brush and dig out a trail, which we did.

Q. Were any of Mr. Kenzie's people working down in the creek when you got up there?

A. Yes, sir, there were some men there when I went there.

Q. Did they stay there that day?

A. They remained until about noon.

Q. What did they do then?

A. They went away then except two men who were left there, two men were left, watchmen, I guess—they were not working—they remained on the premises.

Q. Were you doing any work there on the Lotta or Parish after that at any time when any of the people that claimed to be working under Kenzie came up there to do any work, any other date besides this one you have mentioned?

(Testimony of J. A. Dolfelmyer.)

A. Not after the third; no.

Q. Was there anything else took place there on the third except as you have described?

A. When I went on the ground, the men were in the creek doing some work and some men were across the gulch bringing down some timbers and Mr. Kenzie was in the gulch, that is, on a boulder. There was a man drilling nearby and the man I afterwards learned was Burch was across on the flume and [620] seemed to be directing work from that point and a man by the name of Harry seemed to be on guard, walking back and forth on the flume.

Q. Where were they taking those timbers from, did you see—was it timbers or boards that you saw?

A. They were both round timbers and some boards.

Q. Where were they taking them from and to?

A. From a point on the Basin road almost immediately above the dam or where we were.

Q. As to any further controversy that was had up there, you don't know anything about? A. No.

Q. Did you see a fence up there then across this road that led down from the regular Basin road to the air-compressor on the Ebner property?

A. Yes, sir.

Q. Did you ever see any notice up there?

A. Yes, sir.

Q. When did you first see that fence and notice there?

A. Some time about the 23d—22d or 23d of September.

(Testimony of J. A. Dolfelmyer.)

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. I understand you were working down the creek on a trail?     A. Yes, on the 28th.

Q. Down the creek from the Lotta?

A. Yes, on the 28th.

Q. And on the third the foreman came along and had you change your base of operations?

A. On the third I was working on the high line flume as it is called, the new flume.

Q. When was it you were working there and were called down to [621] another place to work on this trail?

A. On the 28th we went to work almost above where the lower tunnel is situated and worked the balance of the day, from about three to five.

Q. How far did you get with that trail?

A. Oh, we constructed, I guess, 75 feet of rough trail there, got out the brush and dug out the trail.

Q. Where were you on the 29th?

A. I was on the high line flume.

Q. You were just on the trail on the 28th?

A. Yes, I was just on the trail on the 28th.

Q. On the 30th?

A. On the 30th I was on the high line flume.

Q. And on the first?

A. On the first I was on the high line.

Q. And on the 2d?

A. I was on the high line flume.

Q. On the third?

(Testimony of J. A. Dolfelmyer.)

A. Until about nine o'clock I was on the high line flume.

Q. Until about 9 o'clock in the morning of the third? A. Yes, sir.

Q. And then, the foreman sent you back to work on this other spot? A. Yes, sir.

Q. That is when you changed your base of operations? A. Yes.

Q. And were working on the trail there somewhere in the vicinity of what is known as the brushed-out side line between the Lotta and Parish?

A. Yes, a little above that brushed-out line, that is up the creek.

Q. And the men of the Alaska-Juneau Company at that time were [622] working at the place where the dam now is?

A. Yes, where it is marked on the map.

Q. And where it is now situated on the creek?

A. Yes, sir.

Witness excused.

Judge WINN.—I offer in evidence all those photographs we first had identified, the witnesses testifying concerning certain objects, etc., represented thereon, all of them except these two last exhibits which Mr. Webster testified concerning, as I desire to elicit a little further evidence concerning the objects thereon before I formally offer them in evidence. The exhibits offered are numbered from "H" to "N," inclusive.

Mr. SHACKLEFORD.—We object to them as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

They are admitted and given the same numbers as the identification numbers,—“H” to “N,” inclusive. \* \* \*

Judge WINN.—There has been quite a little bit said here about the witness Mackey and some others being convicted of some crime. I desire to get before the Court just what they were convicted of, and we desire to offer in evidence at this time in explanation of some of the cross-examination that was conducted, I believe, by Mr. Shackelford of some of the witnesses, to show they were convicted of simple assault and fined fifteen or twenty-five dollars each—I have forgotten which—but that judgment we desire to offer in [623] evidence in justification of that.

Mr. HELLENTHAL.—We have no objection to that providing the verdict of the jury on which the judgment is based and the indictment be also offered to show it is the same transaction.

Judge WINN.—I am just offering the judgment and sentence which I desire to have withdrawn temporarily from the files and have it marked so it can be copied into the record.

Mr. SHACKLEFORD.—No objection to it.

It is admitted as Plaintiff's Exhibit “X,” is attached hereto and made a part hereof.

Judge WINN.—We desire to offer in evidence the motion of the United States District Attorney to dismiss the case against Mr. Burton, who was jointly indicted with these parties against whom the judg-

ment was rendered—that we have just offered in evidence.

Mr. SHACKLEFORD.—We object to it—we are not bound by the statement of the district attorney.

Objection sustained. Plaintiff allowed an exception.

Mr. HELLENTHAL.—I will admit that Mr. Burton had nothing to do with this thing for the purposes of the record.

Judge WINN.—We desire now to offer in evidence a copy of an oral opinion written by Judge Lyons in Case #803-A on our first application for a restraining order and the action brought by the Ebner Gold Mining Company against the Alaska-Juneau Gold Mining Company and others, which is certified to by Mr. Robertson, the official court reporter, as being a correct transcript of the oral decision which Judge Lyons rendered in open court in regard to that application.

It is admitted without objection and marked Plaintiff's Exhibit "Y"—copy is attached hereto and made a part hereof. [624]

Judge WINN.—I offer in evidence also a certified copy of Judge Lyons' oral opinion rendered in another application that was made for a restraining order by Mr. Hellenthal in Cause #823-A, The Alaska-Juneau Golding Mng. Co. vs. The California & Nevada Copper Co. et al., and we then filed a cross-motion and again renewed our application for a restraining order in 803-A, and also asked for a restraining order in the case of Tripp vs. This



Company in the case which we dismissed, and it is the order made by the Court in that case, showing the status of the parties and also showing that we again renewed our application and shows the exact status which we stand before the Court in to-day in regard to the matter.

Mr. HELLENTHAL.—I have no objection to any orders of the Court in that case, but I do not want to encumber the record with this opinion. I think there are matters in it which are incompetent, irrelevant and immaterial as to this case. It is a mere opinion of the Court and the basis of an order that was afterwards made.

By the COURT.—The nature of the order is indicated by the opinion?

Mr. HELLENTHAL.—No, not exactly; there was a series of orders based upon this opinion, upon the decision of the Court at that time, and I think the orders are the best evidence of what the Court did.

By the COURT.—It will be received and the other side may offer the orders, to be considered in connection with the opinion.

It is marked Plaintiff's "Z," attached hereto and made a part hereof. [625]

Mr. SHACKLEFORD.—At this time we would like to enter on the record our request for the Court to take judicial notice in connection with these opinions offered the allegations in the original complaint in this case, setting out an ouster in the month of August in this action now pending.

By the COURT.—The original complaint—you mean the complaint on which the case is being tried?

Mr. SHACKLEFORD.—The complaint under which the case was originally brought, but not being tried, it being since amended.

By the COURT.—Any superseded pleading in the case as I understand it, if it contains admissions, you will have to offer it in evidence.

Judge WINN.—I shall object to offering that now.

Mr. HELLENTHAL.—At this time I make a demand for the plaintiff to produce the original contract, option, paper or whatever document it may be, that shows the relation between the California & Nevada Copper Company and the Ebner Gold Mining Company, if any such paper exists.

Judge WINN.—That is one of the papers I have assurances has been mailed us. \* \* \* The option, as we contend, is simply an option to sell stock and there is no option on the property proper. That is one of the papers we have sent for, but it has not yet arrived.

Mr. HELLENTHAL.—Let it be understood that Mr. Winn is to offer these papers at a later date, after he closes his case, and in the event that he does not offer them, we will be at liberty to make a motion to strike all testimony relative thereto, bearing upon the relation of these two institutions.

Recess to 7:30 this evening. [626]

## Evening Session.

**[Testimony of Wm. M. Ebner, for Plaintiff  
(Recalled).]**

WM. M. EBNER, recalled:

(By Judge WINN.)

Q. Mr. Ebner, were you in court at the time that Mr. Webster testified concerning some corner posts and stakes that he saw Garside set when Garside was making a survey of the Ebner claims, known as the Lotta, Taku lode, Keystone lode, Crown Point and Golden Fleece? A. Yes, sir.

Q. Did you hear his evidence concerning his having seen Mr. Garside set a stake at the intersection of the millsite and the southwesterly end line or side line of that millsite with the Taku lode claim?

Mr. SHACKLEFORD.—We object to any of that evidence for the reason that it is incompetent, irrelevant and immaterial, the Lotta claim being the key claim of the group and having been surveyed first and all the other claims tied to it.

Objection overruled. Defendant allowed an exception.

A. Yes, sir.

Q. Did you hear his evidence also concerning his having seen the stake which is numbered 2 and 6 in red ink, which seems to be a common end stake of the Crown Point and the Keystone lode claim, at the southeasterly end line of those claims?

Same objection. Objection overruled. Defendant excepts.

A. Yes, sir.

(Testimony of William M. Ebner.)

Q. I will ask you, Mr. Ebner, if you are acquainted with those corner posts which were testified to by Mr. Webster?

Mr. SHACKLEFORD.—It is understood the same objection goes to all this line of testimony.

By the COURT.—Yes, sir, and you are allowed your exception.

A. Yes, sir. [627]

Q. How long have you known those corner posts and stakes upon the ground?

A. Since 1891 and 1892.

Q. You heard Mr. Winters testify upon the witness-stand this afternoon about your having taken him upon the ground yesterday and having photographs taken of certain corner posts and stakes—you are the same man that went with him, are you?

A. Yes, sir.

Q. I will hand you Plaintiff's Exhibit "W" for identification and will ask you to look at it and state from that card what objects you pointed out to Mr. Winter that you were anxious to have included in that photograph.

A. I pointed out to Mr. Winter this particular stake shown in this photograph, which is on the line of intersection between the Webster millsite and the Taku Gold & Silver lode.

Q. That is the one that Mr. Webster has marked what, on that exhibit?

A. I think I remember it was "A." I am not sure.

Q. It is marked "A" in black ink?

(Testimony of William M. Ebner.)

A. Yes, it is marked "A."

Q. How long have you known that post or some other post to be set there in that position?

Mr. SHACKLEFORD.—I object to the evident purpose of that question. Objection overruled. Defendant excepts.

A. You can see that the "A" is on the wrong post—it is just a little bit to one side of the real post.

Q. Are there two posts there?

A. Yes; the real post is this one to the right here with a small stake with a white paper over it, right there (indicating); the one marked is this one here—that is a small [628] stump, but they are very close together.

Q. The stake that you had then taken—

A. Was this stake to the right.

Q. I will get you to mark it—the stake to the right—put a cross on it.

A. All right. I will put a cross right over it. (Does so.)

Q. Now, that stake, Mr. Ebner, as set in that position as indicated there—how long have you known either that stake or some other stake to be in that same place?

Mr. SHACKLEFORD.—We object to the form of the question. It calls for a conclusion of the witness.

Objection overruled. Defendant allowed an exception.

A. I first knew of that stake in 1893.

Q. What surrounding objects are there there, if anything, that cause you to now identify the approxi-

(Testimony of William M. Ebner.)

mate position in which this stake has been these many years—is there anything there to indicate it to you?

A. Yes; in the first place the contour of the ground, the bridge, the creek, the little cabin that used to stand to the right of it and the Webster boarding-house, the old boarding-house as well as the new that stands to the left of it and being right close to the road.

Q. You heard Mr. Webster's direct testimony on the stand the other day concerning this stake being there near some little old cabin there—do you know what has become of that cabin?

A. That has been torn down.

Q. Then I will ask you to take this exhibit—I will change that. Can you take this exhibit and indicate on it from any objects that are shown in the photograph approximately where [629] this old cabin that Mr. Webster testified concerning was formerly located?

A. Yes, sir; right in front of the old cabin that is there now.

Q. Mr. Webster put a letter "B" there—if he found some evidence of a cabin there is that approximately the place?

A. That is just about the place—you can see I think, one of the foundation logs there now.

Q. I hand you now Plaintiff's Exhibit "V" for Identification and ask you if any one of these stakes which you have testified concerning and which you heard Mr. Webster testify concerning is indicated in this photograph?



(Testimony of William M. Ebner.)

Same objection. Objection overruled. Defendant allowed an exception.

A. Yes, sir.

Q. Is there any mark placed on it there?

A. Yes, sir, an "X" is marked close to it.

Q. Mr. Webster found the proper stake then?

A. Yes, sir.

Q. How long have you known that stake to be there or some other stake located approximately where that is? A. Since 1891.

Q. Now, are there any surrounding objects there, Mr. Ebner, that you desire to use in connection with the location of this stake as indicated in this photograph?

A. The Webster dam is right almost in line with it and the flume.

Q. I hand you another exhibit which has been identified to-day by Mr. Winter—it has been marked for identification "U"—I ask you what that is a photograph of?

A. This is a photograph of the falls, the lower falls, as shown from the road. [630]

Q. Are those falls below the mill or above the Ebner mill? A. They are below the mill.

Q. Approximately, how far are those falls from the corner post #2 of the Lotta lode claim?

A. Is that the one down the creek?

Q. No, #2 is the one up the creek, the furthest one up.

A. They are right in the falls or right in the creek, practically in the creek.

(Testimony of William M. Ebner.)

Q. Does that photograph that you have there in your hand show the ground or the location approximately where this corner stake should be?

A. It does not—it is covered with snow here.

Q. Now, I will ask you how long you have been acquainted with the creek-bed and the flow of Gold Creek—say the place where it comes down over the falls there and on down the creek to where it passes the point of Corner #2 of the Lotta lode claim?

A. For the last twenty years—more than twenty years.

Q. I will ask you to state to the Court, and if you desire to use this exhibit to illustrate your answer, do so, as to whether or not the creek-bed at the falls and on down to where this corner post #2 is has ever changed any since you have been acquainted with that creek or has the creek-bed and the flow of the water remained the same?

**Mr. SHACKLEFORD.**—We object to the question for the reason that no proper foundation has been laid, and for the further reason that the question seeks to elicit the opinion of the witness instead of any statement of fact with reference to same and leading.

By the COURT.—Objection overruled. It is leading but it is preliminary. [631]

A. The falls have changed a great deal—they are lower and have shifted to one side, to the left, a great many years ago, probably fifteen years ago; fifteen or eighteen years ago they were still to the right where there is a cavern shown.

(Testimony of William M. Ebner.)

Q. Cavern shown on what?

A. On this photograph; they were much higher and the ground on the left was higher. That has been cut down, the entire falls have been cut down a great deal, it is safe to say ten or fifteen feet in that particular place, and the falls twenty years ago or eighteen years ago used to flow more to the right and come down, probably, and, at least twenty-five or thirty feet further to the right than they do now, and in that respect the creek-bed just below the falls has changed.

Q. Do you mean the right looking up or looking down?

A. Looking up—looking at the falls from the road. They have shifted to the left side of the creek going up—they used to be further to the right going up the creek.

Mr. SHACKLEFORD.—We move to strike the testimony of the witness for the reason that it is not proper examination of a recalled witness—the question as to the position of the creek having been brought out on his original examination. Motion denied. Defendant allowed an exception.

Q. You had not finished your answer. I asked you then to go on and explain concerning this same matter down as far as where we contend that the corner #2 of the Lotta is or should be.

A. Well, the foot of the falls are right close to where the corner would be—the foot of the falls are just about down [632] where the corner would be. The falls are there now, but not where the falls were

(Testimony of William M. Ebner.)

twenty years ago.

Q. I will ask you as to whether or not the changes that you have indicated would widen the creek-bed and wash it over towards this corner stake #2, or would it wash it over on the right-hand side and widen it in that direction?

Mr. SHACKLEFORD.—We object as suggestive, and calling for an opinion of the witness and not based on any observation.

Objection sustained as leading and suggestive.

Q. What effect, if any, would the flow of the water there, as you have observed it for those last twenty years have, if any, upon the creek-bed at the point where this corner stake #2 of the Lotta claim should be?

Objected to as calling for a conclusion of the witness. Objection sustained.

Q. What effect, if any, has the flow of the creek had there in regard to the creek-bed just where this corner post #2 should be or right down towards the creek, at right angles from the corner?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial and not competent evidence for a recalled witness under the circumstances under which this examination has been had.

Objection overruled. Defendant allowed an exception.

A. It was the changing of the falls to the left that had the effect of throwing the creek at least twenty or twenty-five feet further to the northeast than it

(Testimony of William M. Ebner.)

used to be. That is my personal observation.

Q. Would that throw it in the direction of the corner #2 of the Lotta or away from it? [633]

A. It would throw it in the direction of the corner.

By the COURT.—You are sure you are right about those directions there—northeast?

A. Northwest—did I say northeast?

By the COURT.—Yes, sir.

A. I mean northwest.

Mr. SHACKLEFORD.—We make the same objection to the last question. Objection overruled. Defendant allowed an exception.

Q. You are acquainted with Mr. Mackey?

A. Yes, sir.

Q. And Mr. Tripp? A. Yes, sir.

Q. And I believe it has been stated here in this case from some standpoint that you owned in your own name the Cape Horn lode claim upon which Mr. Mackey has begun to drive what is known as the Ebner mine tunnel? A. Yes.

Q. I will ask you, Mr. Ebner, if you ever gave anyone consent to drive a tunnel in there or over that claim?

Mr. SHACKLEFORD.—We object to the question as incompetent, irrelevant and immaterial, and for the further reason that the suits instituted by the company themselves and the admissions in the pleadings in this case up to a few days ago estopped the plaintiff from now claiming that they are going through the Cape Horn lode under a license unless it has been given since that time as a ratification, and

(Testimony of William M. Ebner.)

on the further ground that it is not competent evidence with reference to any interest or right in real estate.

Objection overruled. Defendant allowed an exception.

A. Yes, sir. [634]

Q. Who, if any, persons did you give consent to to run this tunnel through this claim?

Same objection. Objection overruled. Defendant allowed an exception.

A. Mr. Tripp gave him the right to start his tunnel on the Cape Horn #2 and run through the Cape Horn.

Mr. SHACKLEFORD.—Was that permission given in writing?

A. It was.

Mr. SHACKLEFORD.—Then, we move to strike the testimony of the witness.

(By the COURT.)

Q. Have you the writing or a copy of it?

A. I have not.

Q. Do you know where it is?

A. My copy is home—at my home. I gave Mr. Tripp first the permission orally, verbally—permission to go on, and he started working there, and then he thought he should have some permission to show that he had a right to start there.

Q. He started to work under your oral permission and got the other permission afterwards?

A. Yes, sir.



(Testimony of William M. Ebner.)

By the COURT.—The objection will be overruled.

Defendant allowed an exception.

(By Judge WINN.)

Q. What about Mr. Mackey's continuation of this work up there or if Mr. Mackey was working under Mr. Bent, what about Mr. Bent—the continuation of this tunnel ?

Same objection. Objection overruled. Defendant allowed an exception.

Q. Did you ever give them permission, orally or otherwise, to [635] go ahead and drive the tunnel?

Same objection. Objection overruled. Defendant excepts.

A. I gave Mr. Bent an oral permission to continue the tunnel.

Q. What was the purpose of you giving permission and why was it you gave them permission to drive this tunnel in and over this claim that you held in your individual name?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. I gave them permission to drive that tunnel for the benefit of all the claims, the Cape Horn claims, the Parish claims and the entire group.

Mr. SHACKLEFORD.—We move to strike the answer of the witness as stating a conclusion. Motion denied. Defendant allowed an exception.

Q. Now, Mr. Ebner, I will ask you what claims was

(Testimony of William M. Ebner.)

the ore taken from that were milled in the Ebner mill while you were running and operating that plant.

Objected to as incompetent, irrelevant and immaterial.

By the COURT.—What is the purpose of this?

Judge WINN.—I wish to show, in conformity with Mr. Tripp's testimony, that all of this plan or scheme of the tunnel of Mr. Tripp was to come down at the lowest point on the Ebner property and run a tunnel which would tap all of the other property

\* \* \* I want to show by Mr. Ebner that the mines that were worked were way up at the upper end of the property and the intention was to take it out at a lower point.

Objection overruled. Defendant allowed an exception.

A. The ore was taken from the Grand Review and from the Keystone.

Q. Do they lie at the upper or lower end of the Ebner group of [636] claims?

A. They lie about the middle, a little above the middle of the property.

Q. Where do they lie with respect to the Parish #2 lode claim?

A. They lie further to the northeast from there, higher up.

Q. Higher up the Creek? A. Yes, sir.

Same objection to all this testimony. Objection overruled. Defendant allowed an exception.

Q. With respect to the Ebner mine tunnel, then,

(Testimony of William M. Ebner.)

these claims that you milled the ore from, would be at a lower altitude or a higher altitude than the Parish lode #2?

A. It would be a much higher altitude.

Q. I will ask you, Mr. Ebner, if you knew one Joseph McDonald, who was in 1904 superintendent of the Alaska-Treadwell Gold Mining Company's mines over on Douglas Island? A. Yes, sir.

Q. Now, at the time that the Colorado claim was surveyed for patent and the conflict occurred with the Parish lode, I will ask you if you know what position McDonald held with respect to the Alaska-Juneau Company, the defendant in this case?

A. He told me that he was the superintendent.

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial and not the best evidence.

Objection sustained. Plaintiff excepts.

Q. I will ask you in what capacity he was acting at that time with reference to the Alaska-Juneau Company, the defendant in this case?

Mr. SHACKLEFORD.—Same objection and the further objection that it calls for a conclusion of the witness. [637]

Objection sustained. Plaintiff allowed an exception.

Q. I will ask you if you had any dealings with Mr. McDonald in regard to the conflict of the Parish claim with the Colorado at the time that this survey was being made?

Objected to as incompetent, irrelevant and imma-

(Testimony of William M. Ebner.)

terial. Objection overruled. Defendant allowed an exception.

A. Yes, we were negotiating.

Q. For what?

A. He was negotiating for a right of way.

Q. A right of way through what?

A. A right of way for a tunnel through that ground in conflict and we had agreed to it—

Mr. SHACKLEFORD.—Let me ask him a question first.

Judge WINN.—I want to go ahead and show this state of facts—that he had negotiations with Mr. McDonald and that McDonald at that time was acting in the capacity of superintendent of that company's property up there, and in these negotiations he had with McDonald he offered to sign up papers as superintendent of that company up there, but he didn't do it because Mr. Ebner told him he didn't think he had authority, but the same negotiations that were had with McDonald were sent down to the company and was ratified and the deal went through as negotiated with Mr. McDonald. I expect to call on Mr. Kenzie to prove this fact.

Mr. SHACKLEFORD.—I want to ask Mr. Ebner if his negotiations with Mr. McDonald were not reduced to writing?

Judge WINN.—The negotiations with him were—

Mr. SHACKLEFORD.—I ask permission of the Court to ask him whether the negotiations were not reduced to writing.

By the COURT.—You may do so.

(Testimony of William M. Ebner.)

\*Q. (By Mr. SHACKLEFORD.) Mr. Wh—  
[638] pany with reference to the right of way  
through the Colorado and Parish lode were reduced  
to writing?

A. They were reduced to writing right there.

Mr. SHACKLEFORD.—Where is that writing?

A. I think the same writing was produced the  
other day—I have it.

Mr. SHACKLEFORD.—We object to any further  
testimony on that subject.

Judge WINN.—I want him to explain that the  
thing was agreed upon between him and McDonald,  
as this contract that we offered in evidence in this  
case was sent down and the company ratified it.

By the COURT.—The objection is sustained on  
your offer. You stated that Mr. Ebner concluded  
that Mr. McDonald didn't have authority.

Judge WINN.—He did not, because he was merely  
superintendent up there—he had authority to first  
outline the plan with Mr. Ebner, but he did not have  
the right—

By the COURT.—I understand you are under-  
taking to sustain Mr. McDonald's authority to make  
this statement regarding the Parish that you got in  
testimony about the other day?

Judge WINN.—No, sir; it is only this, that Mr.  
Ebner was dealing with McDonald all the time in  
regard to this adjustment, and then McDonald came  
around as superintendent and offered to sign these  
agreements that were drawn up and Ebner said,

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\*Owing to defective carbon copy, omitted words do not appear in original  
Certified Transcript of Record.

(Testimony of William M. Ebner.)

“Well, as superintendent up there, I don’t know, I would rather have this as an act of the corporation,” and then the agreement that was consummated was consummated with the company, just exactly in the form that, well at Mr. McDonald’s dictation, showing that he had authority here to [639] at least recommend this.

By the COURT.—There is nothing in your offer as outlined to show whether Mr. McDonald was a special agent charged with the carrying on of this agreement or whether or not he was the general superintendent or general manager controlling the property. If some particular negotiation that he had charge of the preliminaries of was consummated and ratified by the acts of the company, that does not prove his general authority.

Judge WINN.—I intend to show that McDonald had charge of the property there the same as any superintendent. We don’t try to hold that McDonald had the right to sign this, but I want to show the general acts of McDonald,—that he was up there superintending that property.

By the COURT.—You may ask him if McDonald had charge of the negotiations that culminated in that agreement, that is, for the other company.

Judge WINN.—You will allow me an exception to the ruling?

By the COURT.—Yes, sir.

Q. I will ask you whether or not you had any dealings with Mr. McDonald which consummated in the final execution of the contract which has been offered



(Testimony of William M. Ebner.)

in evidence in this case, which pertains to the allowing of the Alaska-Juneau Company of a right of way for a tunnel through that part of the Parish claim that was in conflict with the Colorado and also which provided for the further allowance to your company of the conflicting part of the Colorado with the Parish claim?

A. Yes, sir, my negotiations were with Mr. McDonald altogether.

Q. I believe you testified the other day how this settlement [640] was finally consummated, did you not,—by your going to San Francisco, to the head office of the company? A. Yes, sir.

Q. Now, I will ask you if the negotiations that you had with Mr. McDonald just as you have told about them, were ratified by the company down there?

A. Yes, sir.

Q. I will ask you if you were doing business here in 1904?

A. Mining business up here on the property.

Q. I will ask you if you know in what capacity was McDonald holding out there and was acting during this time—1904? A. Yes, sir.

Objected to as calling for a conclusion of the witness. Objection overruled. Defendant allowed an exception.

Q. In what capacity?

Same objection. Objection overruled. Defendant allowed an exception.

By the COURT.—That is, holding himself out during all this time you have mentioned.

(Testimony of William M. Ebner.)

Judge WINN.—I mean the year 1904—I don't know how long he remained here—1903, 4 and 5.

A. It was in 1904—it was some time just before that. The reason why I knew positively that he was, I repaired the road, the Basin road, and informed Mr. McDonald the amount and he sent me a check signed the Alaska-Juneau Gold Mining Co., Joseph McDonald, Superintendent—in that way I knew he was superintendent.

By the COURT.—Was the check paid?

A. Yes, sir.

Q. What road was that? A. The Basin road.  
[641]

Q. When you refer to the Basin road, where does that road lead to, from what place to what place?

A. It leads from the town of Juneau to the mines in the Silver Bow Basin—the Ebner mines, Alaska-Juneau mines, Perseverance Mines,—all those mines.

Q. Now, Mr. Ebner, over what years were you and have you been an officer of the Ebner Gold Mining Co.?

Objected to as incompetent, irrelevant and immaterial and not the best evidence.

Objection overruled. Defendant allowed an exception.

A. I have been a director and its *present* since its formation in 1895.

Q. Who has been the secretary of that company?

A. Mr. B. M. Behrends.

Q. Have you here now the stock-book and the minute-book of that corporation? A. Yes, sir.

(Testimony of William M. Ebner.)

Q. I will hand you this book and ask you what it is.

A. This is the stock-book of the Ebner Gold Mining Company. It shows the stock issued or stock outstanding.

The book is marked for identification, Plaintiff's Exhibit "AA."

Q. I will ask you if that company since its organization has had any other stock-book except this one.

A. No, sir; that is the only one.

Q. From what stock-book, then, has the certificates of stock in that corporation been issued ever since its organization down to the present time?

A. From this particular stock-book.

Q. Now, preparatory to the introduction of certain portions of [642] that book in evidence, I will ask you to state in a general way what that stock-book contains.

A. It contains stock certificates and stubs of the certificates.

Q. I will ask you if any stock has ever been issued by the Ebner Gold Mining Company other than the stock that is indicated in this book.

A. No, sir; not to my knowledge; no, sir.

Q. Now, I will ask you to state in a general way—I will ask you what it contains with reference to the issuance of stock and to whom the stock was originally issued.

Mr. SHACKLEFORD.—We object to all this testimony as incompetent, irrelevant and immaterial.

Judge WINN.—It is preliminary—I expect to of-

(Testimony of William M. Ebner.)

fer one of the pages of that book.

Objection overruled. Defendant allowed an exception.

A. Why, it shows the stubs here; it shows the number of the certificate and the number of shares and to whom issued and when.

Judge WINN.—I desire to offer in evidence from this book—I don't know what the pages are numbered—

The WITNESS.—The stock certificates are numbered—they go consecutively.

By the COURT.—Are the stubs numbered?

A. Yes, sir, the stubs are numbered and the certificates.

Judge WINN.—I desire to offer in evidence the stubs of all the certificates that have been issued from Certificate #1 down to 121, inclusive, and also I desire to offer in that connection all of the returned certificates which were pasted in this book, included between Certificate #1 and [643] Certificate #121, and all the matters pertaining to them—the endorsements on the back.

By the COURT.—Are they all there?

Judge WINN.—Yes, sir, they are all there. The certificates have been returned and new certificates issued in lieu of them, but of course there are certificates of stock outstanding in some other people's name, but those that have been returned are indicated here. I desire to offer all those certificates—it shows the entire transactions of the company so far as stock is concerned and all the endorsements are on the

(Testimony of William M. Ebner.)

back of the certificates.

By the COURT.—What is the purpose.

Judge WINN.—It is for two or three purposes. In the first place, it is an aid and assistance in proving that this company is a *de facto* corporation \* \* \* we desire to show to the Court that there is not any interest in the Ebner Gold Mining Company outstanding to-day, but what is represented by the stock issued by that company and any outstanding interest that anybody has is by reason of the stock issued by the Ebner Gold Mining Company. It is a *de facto* corporation \* \* \* there has never been a transfer of the stock on the books of the corporation and the stock stands to-day in the hands of the original stockholders.

Mr. SHACKLEFORD.—We object to that testimony as incompetent, irrelevant and immaterial and not a part of the plaintiff's case in chief, and also as not within the pleadings of the case, and I would like to ask counsel now if he expects to amend his pleadings to conform to the proof contained in that stock-book. If he does he had better make the amendment here now.

Judge WINN.—We have no amendment to make.

The objection was by the Court overruled. Defendant allowed [644] an exception.

Judge WINN.—I offer all the stubs and everything pasted in the books.

Admitted. Copies attached hereto and made a part hereof.

Q. Now, Mr. Ebner, I will ask you if you have the

(Testimony of William M. Ebner.)

minute-book here containing the by-laws of the Ebner Gold Mg. Co.?     A. Yes, sir.

Q. I wish you would turn to that book and tell upon what pages the by-laws are recorded?

A. They are recorded on page 4 to page 9, inclusive—a portion of page 9.

Judge WINN.—I offer it in evidence. I offer in evidence the by-laws of this corporation which are contained on these pages of this record book and ask that the reporter be authorized to copy them into the record. The purpose is along the same line as the other evidence I offered.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

It is marked Plaintiff's Exhibit "BB," attached hereto and made a part hereof.

Q. Now, I will ask you if the Ebner Gold Mining Company has ever entered into any contract with any person or corporation whatsoever for the conveyance of the mining property of the Ebner Gold Mining Company, that is, the mining property up there alone, the real estate?

A. Well, some years ago they did, a great many years ago,—about five years ago they did.

Q. I will ask you if there is any outstanding agreement at present or option to any person or corporation whatsoever that has been signed by the officers of the Ebner Gold Mining [645] Company for the



(Testimony of William M. Ebner.)

sale of the real estate and the appurtenances thereto to anyone?

A. No, sir, not now—no, sir, there has not been for years.

Q. Where did you obtain these books—did you bring them from California with you or have they been here in Juneau?

A. Those have been in the custody of Mr. B. M. Behrends.

Q. I will ask you if—we will say from 1904 or 5, I will not go back further than that—up to the year of 1909, inclusive, whether or not you have been acquainted with the going wages that have been paid to individuals doing and performing assessment work on mining property in Alaska?

Mr. SHACKLEFORD.—We object to the question as incompetent, irrelevant and immaterial, and we demand the books of the Ebner Gold Mining Company, the California & Nevada Copper Company, from the date that Ebner's ledger quits to the present time to show what was actually paid.

Objection overruled. Defendant allowed an exception.

Q. You may answer that yes or no.

A. Yes, I know—I am familiar with it.

Q. I mean in Southeastern Alaska, in and about Juneau?

A. Yes, sir.

(Testimony of William M. Ebner.)

Q. I will ask you to state what they have been over that period of time, I mean from the year 1904, inclusive, of the year 1909—I believe you left here some time during the latter part of 1909?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial and calling for a conclusion of the witness.

Objection overruled. Defendant allowed an exception.

A. Why, the going wages were from \$3.50 to \$4.00 where the man boarded himself and you furnished the tools. [646]

Q. In case you boarded them, what then?

A. When you boarded them probably it would be from \$2.50 to \$3 and his board.

Q. What is that?

A. If you boarded him, from \$2.50 to \$3.00.

Q. You said it was from \$3.50 to \$4 when he boarded himself?

A. It was from \$3.50 to \$4—it all depended on just where it might be located—and he boarded himself.

Q. In case you boarded him, what then?

A. Then it would be from \$2.50 to \$3. It is pretty hard to get a good man for less than \$2.50 and board.

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. This is the record-book of the Ebner Gold Mining Company? A. Yes, sir.

Q. I wish you would turn to that record-book and show the Court the place, if any, where any transac-

(Testimony of William M. Ebner.)

tions or agreements have been recorded between the Ebner Gold Mining Company and the California & Nevada Copper Company.

A. I couldn't show any—it is not in here.

Q. You never had any contract, agreement, transaction or arrangement of any kind?      A. No, sir.

Q. How far did you say it was from the falls in Gold Creek as indicated on this picture Plaintiff's Exhibit "U" for identification, to the place where it is claimed by the witnesses for the plaintiff in this case Stake #2 of the Lotta is situated?

A. I said it was right at the foot of the falls.

Q. You know as a matter of fact it is 100 feet from the foot of the falls? [647]

A. No, I do not.

Q. You deny that it is?

A. I don't think it is. I don't know, but to the best of my knowledge I think it is right at the foot of the falls.

Q. Now, what is there on that picture that indicates it?      A. Nothing.

Q. There is no brushed-out line or thing that settles it in your mind?

A. No, except by sighting from one stake to another. I know where about it should be.

Q. There are no stakes on this picture?

A. There are no stakes on this picture.

Q. Is that the cavern you refer to?

A. I think that's it showing plainly there—to the right of the falls; that is the one.

(Testimony of William M. Ebner.)

Q. Take a pen and mark that cavern—mark it “C<sup>2</sup>.”

A. I will mark it just above, this way. (Witness marks it.)

Q. Now, that is really not a cavern; it is a place evidently where boulders have been imbedded in some way and gone out.

A. It is a place where the water has washed out and worn out the rock.

Q. How deep overhead is it—would you say three or four feet?

A. Yes, I guess it is all of that. I think it is more than that probably.

Q. That cavity there that you call a cavern has been washed out since you have been in Alaska?

A. I expect it has. I wouldn't say as to that, but as the falls gradually receded and went to the left a cavern became visible.

Q. When you first came here you couldn't see that cavern? [648]

A. Except in the winter-time, when the water was very low you could see the cavern there.

Q. What is the stage of water at the present time up there?

A. It is what you might call a summer stage.

Q. A high stage of water?

A. No, not a high stage of water.

Q. Summer stage in this country is the high stage, a high stage.

A. No, not high stage; no, sir.

Q. But, ordinarily, except in the extreme low

(Testimony of William M. Ebner.)

stages, you could not see that cavity when you first came to Alaska? A. No, sir.

Q. Now, the old channel of the creek, as I understand you, ran over this place marked "C"?

A. Yes, sir.

Q. And you first saw it? A. Yes, sir.

Q. And that cavity is how far now from the thread of the creek the day that picture was taken?

A. It must be six or eight feet or more.

Q. Six or eight feet?

A. Yes, sir, more than that.

Q. Then, in your opinion, that has thrown the creek over in the direction of stake #2 of the Lotta?

A. It has thrown it to the left as you face the falls.

Q. That is in the direction of stake #2 of the Lotta? A. That is in the line, yes, sir.

Q. That is the reason that water raised to the left?

A. I don't know; that is one of the peculiarities of this creek here.

Q. Did you hear Mr. Hill's testimony here the other day to the [649] effect that the ground on the left-hand side of the creek was softer than the ground or rock, whatever you might call it, softer than on the right-hand side?

A. I don't remember that. I don't know that I was in here; I don't remember that.

Q. Well, is it?

A. I don't know whether it is or not.

Q. It is shaley, is it not, on the left-hand side of the creek?

A. When you get away from the fall on the left-

(Testimony of William M. Ebner.)

hand side is slidey—it is not slidey there.

Q. Where—what do you mean by that?

A. I mean the left-hand side going up as you face the falls, standing on the road.

Q. It is slidey?

A. Yes, I refer to away from the falls—that side is not as solid; the rock is not in places solid there as it is on the right-hand side.

Q. And in your opinion also this change in the creek has caused the creek at the intersection of the south line of the Lotta to be thrown to the right-hand of the creek as you look on the creek, going up?

A. I don't know about that; in some places it will shift one side and then it will shift on another.

Q. You have not made any observations?

A. Yes, I have made quite a good many observations.

Q. Not at the lower crossing?

A. Not particularly there, but as far down as my new mill—I think I know about that.

Q. I mean as far down as the compressor plant?

A. Yes, sir. [650]

Q. Beyond that you have not made any observation? A. Not as close as above that.

Q. And you simply say that at the point marked stake #2 of the Lotta you think the creek has changed its course to the west?

A. To the northwest, it has, since I have been here; yes, sir.

Q. To the northwest? A. Yes, sir.



(Testimony of William M. Ebner.)

Q. At the foot of the falls there is a big boulder, is there not?

A. There is a comb of rock, a hard comb of rock, that comes across and makes a big pothole behind it, and there are probably some big boulders in there too.

Q. I now call your attention to a projection under the veil of the water there in the centre of the creek in the foreground of this picture, Plaintiff's Exhibit "U," and ask you if you recognize that boulder or rock that shows under the veil of the creek there?

A. Yes.

Q. Now, I will ask you to mark that spot there.

A. I don't know whether that is a rock or part of this same hard comb or belt that comes across there. I think it is.

Q. I will ask you to mark that spot there, mark it "B<sup>1</sup>." A. I will mark it right over it. (Does so.)

Q. Now, the Lotta stake #2 should be how far from that boulder?

A. I don't know; that is about on the line.

Q. With the Lotta stake #2—that is a line drawn across the creek at that point? A. Yes.

Q. Would strike—

A. A line from the stake on the road to where the line crosses [651] the well-house and in line with the stake at the intersection of the Webster millsite and all of those stakes on the north line, it would be just about in there; I wouldn't say it would be right where that boulder is there or right opposite that boulder but close by there—probably not close

(Testimony of William M. Ebner.)

to the boulder, but probably in that line.

Q. Within how many feet?

A. I couldn't tell that.

Q. How near approximately?

A. That I couldn't tell.

Q. You know from this map that stake #2 is right in the edge of the creek?

A. I should judge it was probably to the west of that boulder, just about where that snow is there, that is about—I am not so familiar with the side line of the Lotta—that side line there I have had surveyed and they would traverse it to come around the road.

Q. Now, mark on this snow about where you think that stake ought to be—you say it is covered with snow?

A. I should think it would be just about this point approximately.

Q. Mark it "S<sup>2</sup>."

A. The only thing I can mark is about the line—along the north line.

Q. Well, mark it where it would come through there.

(Witness does so. It is marked "S<sup>2</sup>.")

Q. You have seen the stake there a good many times, have you not?

A. The one down at the falls?

Q. Yes. A. No, I never saw that. [652]

Q. You never saw that stake?

A. No, I am only approximating from the north line—sighting along the north line.

(Testimony of William M. Ebner.)

Q. Did you see that stake when you located the Parish #2? A. No, sir.

Q. You hadn't found that stake?

A. No, sir, not that stake.

Q. But you knew where that line crossed the creek when you located the Parish #2?

A. No, not when I located the Parish #2. I know where the other line crosses the creek.

Q. There is a place up here at the corner of the Lotta marked dump? A. That shows right there.

Q. That is your dump?

A. That has been the dump, yes, sir—I mean below the falls and to the right—it shows on the picture, on Exhibit “U.”

Q. If Mr. Hill says that dump would cause the Lotta—would cause the creek to move over to the end line of the Lotta and throw stake No. 2 in the creek at that point, he is mistaken?

A. No, sir, I have seen that, in dumping the entire winter, when the water was *lot*, it would run through the dump, it would seep through the dump and in the spring of the year, the dump being on this side, it would cut around on the northwest side of it.

Q. The dump has washed off along the creek bed there now?

A. It is now, yes; the high water has washed it away.

Q. And according to your theory the creek has changed its course up above the dump, hasn't it?  
[653]

A. The falls and creek have changed above the

(Testimony of William M. Ebner.)

dump; yes, sir.

Q. How many feet do you say it has changed?

A. They are changing—those falls from what it used to be has changed that creek and thrown it toward the northwest at least twenty-five to thirty feet, where the falls strike at the bottom.

Q. But it is only 6 feet, as I understand it, at the point marked “C,” where that cavity is?

A. It is about that, but the falls used to come down on another angle, and it is plainly shown on that photograph where the bare rock is—that is where the notice used to be.

Q. When did it strike you that the creek had changed its course?

A. I have known that from personal observation for the last twenty years. I saw it gradually change.

Q. Were you here during any of the hearings last fall? A. No, sir.

Q. You were not here? A. No, sir.

Q. You made an affidavit that you didn't know the position of the ground involved?

A. No; I made an affidavit as regards the stakes on the Lotta, I think.

Q. Now, when you were discussing the position of the Lotta—the question as to the position of the Lotta came up when you were on the stand last time, in discussing it with your attorney, Judge Winn?

A. The position of it?

Q. Yes, with reference to the creek ties?

A. I think that was discussed, yes, sir. [654]

Q. How did it happen that your evidence was not

(Testimony of William M. Ebner.)

elicited in that respect when you were first on the stand?

A. Well, I guess Judge Winn didn't know anything about it.

Q. You hadn't told him?

A. I hadn't told him; my personal observations had been that the creek had changed.

Q. How did you happen to locate the Parish lode that is, did you take a man with you the day you located it?

A. Do you want to know the history of it?

Q. I will ask you now, the Parish #2 lode, was anybody with you the day you made your discovery?

A. When I made my discovery I think I had two men with me at that time.

Q. How did you happen to take these two men with you?

A. In the first place, I always take a man with me when I go out in rough places, and I had them for cutting brush—the brush was very high and a great deal of it.

Q. Did you go out on a prospecting expedition or did you just happen to be cruising there?

Judge WINN.—We object to that as not a proper question. It was covered before on cross-examination.

By the COURT.—He may answer.

A. There is a man named Parish had this located before I ever thought of locating it. I saw him here in Juneau about two years after he located them and I asked him about the ground—asked him if he had

(Testimony of William M. Ebner.)

found any values, and he said he had but he didn't do the assessment work.

Mr. SHACKLEFORD.—That is not responsive to my question, and we object to it.

Objection sustained. [655]

The WITNESS.—That is the way I came to locate them.

Q. Parish let the lodes lapse, did he?

A. Yes, sir.

Q. So you went out there some time—was it August, 1899?

A. It was during the latter part of the summer. I prospected around for some time before we started to locate them.

Q. And your location notice described your discovery point?

A. Yes, sir; within a few feet or a short distance; yes, sir.

Q. I wish you would describe to the Court the appearance of that discovery.

A. Why the discovery on the Parish #2, Mr. Shackleford, is just north of a pit, an old pit, that was there.

Q. The Borean pit?

A. The Borean pit and the bedrock stuck out in one place there and showed quartz—that was the discovery for the Parish #2.

Q. Is that bedrock there now?

A. I think that that is blasted out. I think that is where the open cut was made.

Q. It is blasted out? A. Yes, sir.



(Testimony of William M. Ebner.)

Q. After you got through sampling and blasting this rich rock did you leave any there that anybody could find any value in?

Objected to as incompetent and immaterial and not proper cross-examination.

Objection overruled. Plaintiff allowed an exception.

A. I didn't carry any rock away except that which I used for assaying.

Q. Did you leave any rock of value there?

A. Yes, sir.

Q. Could you show it to anybody now? [656]

A. Yes, sir.

Q. Where else have you got rock, gold-bearing rock within the meaning of the mineral statute, that has value for mining purposes?

Objected to as not cross-examination. Objection sustained.

Q. You claim it is a gold-bearing rock?

A. Yes, sir.

Q. There is no other mineral you discovered in it?

A. No.

Q. Where else?

A. There is a point down the creek from the tunnel I started a little ways, and up on the bank there are some stringers that show there, and that is where we made the open cut, and there is quartz piled to one side now, some little of it left that the slide has not taken down and some boards lying there. We had a large open cut there, some twenty-odd feet long and seven or eight feet wide, in order to get down

(Testimony of William M. Ebner.)

to the solid rock, and there is some good pay-rock there.

Q. Not in place?      A. Yes, sir.

Q. You can show that?      A. Yes, sir.

Q. And it will assay pay-rock?

A. Yes, sir, take an average sample across there and it will assay.

Q. What is the width of that cut, the average sample?

A. That cut was right across the formation, and, if I remember right now, there was some sixteen or eighteen feet there.

Q. Where is that cut?      Mark it on this map.

A. I can do it approximately. Is the lower tunnel marked on here? [657]

Q. Yes, it is right there—the upper is here and the lower one there. You are referring to the tunnel underneath the present Alaska-Juneau flume-line?

A. It is the one close down by the creek; when the water is high, high water almost runs into it—it does run into it when it is high, very close to it, and it is just above that tunnel, down the creek, on the bank. I can mark that approximately.

Q. How far from that tunnel down the creek?

A. It is probably 30 feet or so down the creek and up on the bank. The bank is very high. I mark this here—it will be very approximate, because the bank slopes some there.

Q. It is in that open cut?

A. It is in that open cut; yes, sir.

Q. And the open cut is plainly visible?

(Testimony of William M. Ebner.)

A. Yes, it is visible from the road now—I have marked it there with a lead pencil mark.

Q. How is it marked?

A. I have just made two straight marks.

Q. That is the two lead pencil marks just down the creek from the place marked tunnel?

A. Yes, sir.

Q. Did you follow that up, that ledge up?

A. No, we prospected that on the surface, done the work there and then started a tunnel below.

Q. In 1904 you quit doing all your underground work?

A. I don't remember whether it was in 1904.

Q. It has been some years since you have done any underground work?     A. Yes, sir. [658]

Q. And you commenced working another part of the claim?     A. Yes, we worked on another part.

Q. You know as a matter of fact, don't you, that that claim is out of the known value belt of the country through there?

A. I don't know anything of the kind. I know there is value there.

Q. You want the Court to understand that the Parish lode was not located for any purpose of convenience in saving your rights?     A. No, sir.

Q. To reach the other side of Cape Horn?

A. No, sir.

Q. You had no such idea in mind at the time?

A. No, sir; not at all.

Q. Do you know any other place—can you point me to any other place on the Parish lode where pay

(Testimony of William M. Ebner.)

and rock in place can be found?

A. Approximately, yes.

Q. Approximately? A. Yes, sir.

Q. Where is it?

A. Close to the Lotta line, and almost opposite the cabin, about thirty or forty feet from the Lotta line, in one of those cuts I made across there I found some good pay-rock.

Q. Is that on the Lotta or Parish? A. Parish.

Q. Up on the bank or down the creek?

A. It is on an incline—it is all inclined there.

Q. (By Judge WINN.) Is that Parish #1 or #2? A. Number 2. [659]

Q. Mark that place. (Witness does so.)

Q. So that if Mr. Tripp says he has scoured that claim for values and was unable to get any, he has not looked in any place you mentioned?

A. He has not looked in the right places.

Judge WINN.—Mr. Tripp didn't say anything of the kind. We object to that.

Q. I wish if you know any other place on the claim where there is pay-rock in place you would indicate it. A. On the Parish #2?

Q. On the Parish #2.

A. Well, right close to where I marked there, there is two crosscut ditches that I made—*there* are close together there and there is pay on the same trend that that is marked, in both ditches. It shows there is a belt through there that carries pay.

Q. That is across the formation?

A. That is across the formation; the formation

(Testimony of William M. Ebner.)

trends northwest and southeast and these cross—my aim was to make these cuts cross the formation; it is about in this direction.

Q. Your principal work on what is known as the Ebner properties has been the Taku, Keystone and Crown Point?    A. Yes, sir.

Q. And upon other claims up the hill?

A. Not any up the hill from the Crown Point; no.

Q. You were talking to me a little while ago about the Keystone and some other claims. Where are those claims?

A. The Keystone is right here; there has been some done on the Grand Review up here.

Q. You haven't done much work on the Lotta?

A. You mean the Lotta? [660]

A. You mean mining?

Q. Yes, mining?    A. No; no mining.

Q. And you have never done any mining on the Parish #2?

A. No; the Lotta is below the present workings; it would be impracticable.

Q. It would require other working?

A. You would have to get a track and tram to hoist up to where I was operating.

Q. You haven't done any other development work but what was necessary to preserve the Parishes—than what you thought was necessary to preserve the Parish?

A. No, the assessment work is all, and ascertaining where the values were.

Q. Now, we have got through with the places

(Testimony of William M. Ebner.)

where you say value may be found?

A. On the Parish #2; yes, sir.

Q. And those values are all accessible at the present time?

A. Yes, I expect they are; I haven't been over there this spring.

Q. And the place you describe in your location notice in the Parish #2 is the place you describe as your discovery? A. Yes, sir.

Q. What year was it you discovered mineral in these other places—take, for instance, the place down underneath the present Alaska-Juneau flume, marked with two marks and near the tunnel.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. You mean right where the tunnel is?

Q. The place you call open cut, down near the creek from the tunnel? [661]

A. Oh, I think we started there along about 1901.

Q. When did you get through work there?

A. We worked there several years in that open cut.

Q. And when did you discover the mineral? And where?

A. We discovered the mineral on the edge as we started in—there was some showing of quartz on the edge at the break.

Q. Did you have it assayed? A. Yes, sir.

Q. Have you got any record of that assay?



(Testimony of William M. Ebner.)

A. I expect there is a record somewhere, but I wouldn't know where to look for it.

Q. Now, on the place marked over here near the house on the Lotta lode claim—when did you make that discovery?

A. I made that discovery along in 1902 or 3—somewheres along in there.

Q. There is another place you mentioned besides that and besides the discovery point.

A. Near the Borean pit?

Q. The one near the Borean pit is your discovery, is it not? A. That is the discovery.

Q. There is one a little ways down the creek from the tunnel there, I think you said below the open cut, another place down there? A. No.

Q. That ground up there near the shack that is on the Lotta lode claim, is that solid formation?

A. I got down to the solid formation, yes, sir.

Q. How deep did you have to go?

A. Some places four or five feet—six feet in some places.

Q. Any slide material there? [662]

A. It is all slide on the surface.

Q. About four or five feet deep?

A. In some places I did; yes.

Q. What time of the year was it you made this discovery we have just been talking about near the side line of the Lotta?

A. You mean all of them, both places?

Q. The point near the house?

A. I don't remember just what time of the year

(Testimony of William M. Ebner.)

it was; it was during the summer—we turned the water in and then took and cut the roots and cut the brush and took the rocks out and washed the dirt down and got the excavation that way and cut out a ditch—I don't remember just what time in the summer. As I testified before, I would take the men over there and I had men to spare.

Q. You don't know what time then?

A. During the summer.

Q. The summer of what year?

A. We worked there of even the summer of 1899. We started to do some of that work and 1900 and 1901.

Q. Was the discovery made in 1899 or 1900?

A. That discovery just below the cabin? That was not made until 1902 or 3.

Q. And the discovery in the open cut near the creek?

A. That was made, I think, in 1901, that discovery there.

Q. What time of the year was that?

A. I don't remember just the time—it was the summer season.

Q. And the open cut here?

A. You mean the Borean cut?

Q. Yes.

A. That is our discovery and that is where we started work in [663] the first instance—got the water in and got the dam in.

Q. How far is your discovery on the Parish #2 lode—your original discovery of 1899—how far is it

(Testimony of William M. Ebner.)

from there to the end line stakes 3 and 4 of the Parish #2 lode as indicated on this map?

A. You mean the discovery of Number 2?

Q. Yes.

A. It is only a short distance. The discovery stake was not set right on the discovery—just a little south of it.

Q. Your location notice was posted in a tin can on your discovery stake? A. Yes, sir.

Q. And it was just a few feet from the north end line of the Parish—I mean from the southeast end line of the Parish #2?

A. From the southeast end line of the Parish #2, yes, sir.

Q. If that is the case, why is it your location notice reads this way: Commencing at the notice of location posted on a post in Gold Creek canyon, about 600 feet in a westerly direction from the southwest corner of the Lotta claim. Now, as I understand it, the southwest corner of the Lotta claim is corner #2?

A. No; the southwest corner is this right here.

Q. That is the southwest?

A. That is the southwest and this is the northwest.

Q. Six hundred feet?

A. That description refers to—from there to the discovery and then across.

Q. The discovery is located about 300 feet from the southwest corner of the Lotta, is it not?

A. More than that. [664]

(Testimony of William M. Ebner.)

Q. The discovery is about this point on that map, marked "open cut," is it not?

A. Yes, just about.

Q. That is midway of the Parish claim and the Parish claim is only 600 feet wide?

A. That is right; it is 125 feet from there to there, from this corner to this corner.

Q. That wouldn't add 125 feet to the distance when you took the triangle? A. Not quite; no.

Q. And running in a southeasterly direction parallel to the said Lotta and the Royal lode claims and about 300 feet from the same to the end of the lode claim, Parish #1, being 700 linear feet and from the location post in a northwesterly direction, parallel with the southwest line of the said Lotta claim 800 linear feet.

A. What location notice are you reading now?

Q. The Parish #2.

Mr. SHACKLEFORD.—I will reserve the right to introduce the notice of location in connection with the cross-examination of the witness.

The WITNESS.—If you have reference to the discovery post on Number 1 that is about 600 feet—

Q. I am talking about the discovery post on #2.

A. I didn't say it was 600 feet from the Lotta post to discovery stake Number 2.

Q. Where is your discovery stake on Number 1?

A. In Snowslide Gulch.

Q. At the point you have marked discovery here and which you have indicated in your testimony as discovery, near the point marked open cut, within

(Testimony of William M. Ebner.)

the lines of the Parish #2 [665] lode claim and near the southeast end line—how deep is bedrock under the slide there?

A. You mean the bedrock in the pit or where the discovery was?      A. Yes.

A. The bedrock came right up—it was visible.

Q. How deep is the slide under there?

A. No slide at all—that is, for a short space.

Q. There is a ledge sticks up through the solid rock?

A. There is a ledge stuck up through the slide.

Q. When was the last time you were up there?

A. Last fall.

Q. It was up there then?      A. Yes, sir.

Q. And there was still quartz in the ledge?

A. Yes, sir; going up to that Borean pit there, on the left-hand side of the pit, there is a large projecting rock stands on it—when you got into the Borean pit, the left limit of the pit, on the left-hand side, there is the bedrock came up, rock in place there, stuck out of the ground.

Q. I will now hand you a photograph and ask you if you recognize that.      A. Yes.

Q. How close?

A. Well, I can't say, because it does not show enough of this side here—I can't say how close that is; it is not far from it; that is rock in place right there, I think.

Q. On the left?      A. Yes, sir.

Q. Of the picture as you are looking at it?

A. Yes, sir.

(Testimony of William M. Ebner.)

Q. Is that the Borean pit? [666]

A. It looks like the Borean pit around it there.

Q. You were up there last fall?

A. I walked across there last fall; yes.

Q. That is a photograph of a part of the Borean pit?

A. There was a light bit of snow on the ground when I went across so I couldn't see things just as plain as I might.

Q. That is a photograph of the Borean pit, part of it?

A. Part of it—that looks a good deal like it; yes, sir.

Q. Is that the boulder?

A. If that is what I think it is, that is rock in place. I have been down in the bottom of that and uncovered all this bedrock along in here; it is barely possible this is, but there is some rock that is not shown in the picture there, more rock in place.

Q. Do you know where that open cut is in the Borean pit?

A. Yes, it is quite a long open cut.

Q. Long enough almost to bury a man in?

A. I should say it was longer than that; it was from there down to the creek.

Q. I mean the open cut that traverses across the country there—it is probably the most recent one; it is the one that traverses across the hillside parallel to the creek.

A. That is not so very long a cut; no.

Q. That is a cut probably ten feet?



(Testimony of William M. Ebner.)

A. It is more than that.

Q. Twelve or fourteen?

A. That is where I said the men worked in 1908, and I just took a casual look at it last fall and couldn't say, but I think it would be twenty feet long.

Q. Where is your discovery with reference to that cut? [667]

A. It was right—that open cut was the discovery—that is, some of the rock.

Q. That is the open cut they were working on in 1908? A. Yes, sir.

Q. That is the one that is plain there now?

A. Yes, sir; that is where John Perelle was put to work.

Q. Right in that cut—that is your discovery?

A. Yes, sir.

Q. Where is that cut from this boulder?

A. I think that rock is one side of it—that shows one side of that rock right there.

Mr. SHACKLEFORD.—We offer the picture in connection with the witness' testimony.

Objected to as incompetent, irrelevant and immaterial.

The WITNESS.—It doesn't show enough on this side—I think it is, it looks like it—I wouldn't be sure.

Objection overruled. Plaintiff allowed an exception. It is marked Defendant's Exhibit #9 and admitted in evidence.

Q. I show you another picture and I will put a

(Testimony of William M. Ebner.)

mark on it in red ink and at a certain point where the snow is lying on the ground. I will ask you what that place is, where the snow is.

Judge WINN.—We object as not proper cross-examination and not proper for them to offer these photographs that we have had somebody take.

Objection overruled. Plaintiff allowed an exception.

A. I don't know what that is.

Q. You don't?

A. No; not that where you put the mark—that is a bunch of [668] snow here. Here is the rock I am talking about. You are looking down towards Juneau. Now, that is the rock on the left there.

Q. On the right, as I am looking at the picture?

A. On the right as you are looking at the picture, yes—that looks like the rock I had reference to.

Q. That is the rock you made the discovery at?

A. I think so; it don't show enough here, but it looks like it.

Q. You don't recognize that cut there where the snow is? A. No; I don't know where that is.

Q. You didn't see that cut there last fall?

A. I don't remember that cut.

Mr. SHACKLEFORD.—We offer that in connection with the witness' testimony.

Judge WINN.—We object to it; no foundation laid—no photographer has testified where it was taken or whether it shows any of the ground in controversy.

Objection overruled. Plaintiff allowed an excep-

(Testimony of William M. Ebner.)

tion. It is admitted as Defendant's Exhibit #10.

Q. Other than the books you have produced here the other day, you have no knowledge what was actually paid for the assessment work done on these claims? A. I have not, just now; no, sir.

Q. In counting up assessment work you always count the amount actually expended, don't you?

A. That is the way I have always done—actually expended; yes, sir.

Q. Irrespective of any rule about the value of assessment work?

A. Any assessment work I have done I have never followed any rule except the actual money expended.

By the COURT.—That is, what you paid for it? [669]

#### Redirect Examination.

(By Judge WINN.)

Q. I don't know what books Mr. Shackleford referred to. He said other than the books you produced the other day? A. I only produced one.

Q. I understand that account Mr. Shackleford offered in evidence the other day only covered the assessment work to 1906 on this property.

Mr. SHACKLEFORD.—I said outside of those books, he had no means of saying how much the work cost.

Q. You know what you actually paid out when you did the assessment work up there? A. Yes.

Q. And you testified concerning what you paid out before Mr. Shackleford identified the book?

A. Yes, I knew how much I paid out every year,

(Testimony of William M. Ebner.)

actual money—the cost.

Judge WINN.—Now, in this connection, if the record does not already show it, I ask that the stenographer be authorized to copy that page of the book that Mr. Shackelford offered in evidence the other day into the record, for the reason that we would like to release that book and there was only one page of it offered.

By the COURT.—Whatever the record shows at the time it was offered will be done. If there is no dispute about it the order will be made again.

Judge WINN.—My recollection is that Mr. Shackelford offered it in evidence when Mr. Ebner was recalled, but I don't know whether authority was given the stenographer to copy it or not. [670]  
(By Mr. SHACKLEFORD.)

Q. You have had several talks with Mr. Webster concerning his testimony in this case?

A. Several? No, sir.

Q. Two, haven't you

A. I possibly had two—if I did they were both very short.

Q. You had one last night and one before he came on the stand the first time?

A. Last night? I had one before he came on the stand the first time—just asked him what he remembered about that.

Q. Did you take him over to see the photographs last night? A. No, sir.

Q. Have you taken him up to the point in dispute since you first commenced to talk with him?

(Testimony of William M. Ebner.)

A. No, sir.

(By Judge WINN.)

Q. I will ask you when you went up there to locate the Parish #2 did you have any conversation with a Mr. Nevins up there who was locating some claims up there for Mr. Corbus?

A. Not at the time I made my location. After—some time after—several weeks after I made my location I had some conversation with Nevins on the road.

Q. I don't remember whether I asked you this question or not: Did you have any conversation with Nevins at that time in regard to any locations he had been making there for Mr. Corbus and also in this conversation was anything said pertaining to your location of the Parish #2 claim?      A. Yes.

Q. I wish you would relate what that conversation was.

Mr. SHACKLEFORD.—Counsel has already made the offer with reference [671] to that and we object to it as incompetent, irrelevant and immaterial, particularly as incompetent; no authority on the part of Mr. Nevins has been shown to surrender title or possession of any property he had located for the benefit of the company.

Objection sustained. Plaintiff allowed an exception.

Judge WINN.—I want to show that this conversation was had—that Mr. Nevins said virtually to Mr. Ebner in these words, substantially—that he would go up there and take up the stakes that he had

(Testimony of Angus Mackey.)

set on what he called the Oregon claim, and he also said to Mr. Ebner at the time he made his location, the Oregon, for Mr. Corbus, that he had seen some sign of a location there but didn't know that Mr. Ebner had located the ground ahead of him—that is substantially what I desire to prove by the witness.

Offer denied. Plaintiff allowed an exception to the ruling.

Witness excused. [672]

**[Testimony of Angus Mackey, for Plaintiff  
(Recalled).]**

ANGUS MACKEY, recalled.

(By Judge WINN.)

Q. In driving this tunnel called the Ebner mine tunnel, I will ask you if you used any power other than that generated by the men who were driving it with their picks, etc.

Objected to as incompetent, irrelevant and immaterial. Objection overruled. Defendant allowed an exception.

A. Yes, we used compressed air.

Q. Where did you get the compressed air?

A. From the compressor-house up near the old Ebner mill—on this side of the old Ebner mill.

Q. It was that old compressor hoist that was used in connection with the running of the old Ebner mill?

Objected to as leading. Sustained.

Q. What compressor hoist was it and what machinery that you used for generating this power?



(Testimony of Angus Mackey.)

A. It was the compressor Ebner used at the upper works.

By the COURT.—On the Lotta?

A. I think it is on the Lotta.

Q. There is but one compressor hoist up there.

A. There is just one compressor up there—it is on this side of the old mill.

(By Mr. SHACKLEFORD.)

Q. That is the compressor hoist marked on this exhibit, Plaintiff's Exhibit "U," on the Lotta claim?

A. Yes, that is the one there.

Q. And I understand you that this tunnel was being driven not only for the purpose of developing the unpatented claims but also the patented claims?

A. Yes, sir, the whole group. [673]

Q. Now, do you know where the agreement is between Mr. Ebner and your company or any one else about the privilege of driving through the Cape Horn lode? A. No, I do not.

Q. Did you ever have any conversation with Mr. Ebner prior to this spring about driving through these Cape Horn claims? A. No, sir.

Q. You don't know anything about such an agreement? A. No.

Q. So far as your knowledge and action as regards the company's property and your dealings are concerned, up to a few days ago you supposed that you owned the Cape Horn lode—that is, the Ebner Company owned the Cape Horn lode?

Objected to. Objection overruled. Exception allowed.

(Testimony of Angus Mackey.)

A. I don't know anything about the titles to the property.

Q. (By Judge WINN.) I believe you stated that you were working partly under the instructions of Mr. Bent and Mr. Underwood?

A. Yes, Mr. Bent is the general manager.

(By Mr. HELLENTHAL.)

Q. Mr. Bent is the general manager of the California & Nevada Copper Company?

Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

Objection overruled. Plaintiff allowed an exception.

A. That is what I understand.

Mr. SHACKLEFORD.—I want you to produce here, if you can, the books showing the amounts which you actually paid to the men doing the assessment work in 1909—have you such a book?

Judge WINN.—Mr. Mackey didn't do a lick of assessment work in 1909. [674]

By the COURT.—He can explain that—if he has or has not.

The WITNESS.—In 1909?

Q. Yes. A. We haven't got anything.

Q. Do you know where the books of 1909 are?

A. I do not—I never saw them.

Q. Do you know who kept them?

A. I do not. I was not in the country. I was in Central America at that time.

Q. Have you made any enquiry about them?

(Testimony of William M. Ebner.)

A. No, sir.

Witness excused. [675]

[Testimony of Wm. M. Ebner, for Plaintiff (Recalled—Cross-examination).]

WM. M. EBNER, recalled for further cross-examination:

(By Mr. SHACKLEFORD.)

Q. Were you in Juneau last year?

A. Part of the time.

Q. What time were you here?

A. I was in Juneau in the spring and then again in December.

Q. Were you here when this action was brought to eject these parties from this property?

A. No, sir.

Q. Were you here about the 12th of December?

A. About the 12th? Yes, I was here about the 12th.

Q. Who was it you had an agreement in writing with about crossing the Cape Horn lode?

A. Mr. Tripp.

Q. What was the nature of that writing?

A. I don't remember just now.

Q. A letter or a contract?

A. I don't remember, a sort of—I suppose it might be a contract or agreement.

Q. Who drew it for you?

A. I don't remember that.

Q. You kept a copy of it?      A. Yes, sir.

Q. You don't remember where it was drawn?

A. I don't remember who drew that for us.